

SB 205 – AS INTRODUCED

2012 SESSION

12-2981

03/10

SENATE BILL **205**

AN ACT revising the New Hampshire business corporations act, RSA 293-A.

SPONSORS: Sen. Luther, Dist 12

COMMITTEE: Commerce

ANALYSIS

This bill revises the New Hampshire business corporations act, RSA 293-A.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular
type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT revising the New Hampshire business corporations act, RSA 293-A.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Hampshire Business Corporation Act. RSA 293-A is repealed and reenacted to read as
2 follows:

3 CHAPTER 293-A

4 NEW HAMPSHIRE BUSINESS CORPORATION ACT

5 General Provisions

6 Part A

7 Short Title and Reservation of Power

8 293-A:1.01 Short Title. This chapter shall be known and may be cited as the “New Hampshire
9 Business Corporation Act.”

10 293-A:1.02 Reservation of Power to Amend or Repeal. The general court has power to amend or
11 repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this
12 chapter are governed by the amendment or repeal.

13 Part B

14 Filing Documents

15 293-A:1.20 Requirements for Documents; Extrinsic Facts.

16 (a) A document must satisfy the requirements of this section, and of any other section
17 that adds to or varies these requirements, to be entitled to filing by the secretary of state.

18 (b) This chapter must require or permit filing the document in the office of the secretary
19 of state.

20 (c) The document must contain the information required by this chapter. It may contain
21 other information as well.

22 (d) The document must be typewritten or printed or, if electronically transmitted, it
23 must be in a format that can be retrieved or reproduced in typewritten or printed form.

24 (e) The document must be in the English language. A corporate name need not be in
25 English if written in English letters or Arabic or Roman numerals, and the certificate of existence
26 required of foreign corporations need not be in English if accompanied by a reasonably authenticated
27 English translation.

28 (f) The document must be executed:

29 (1) by the chairman of the board of directors of a domestic or foreign corporation, by
30 its president, or by another of its officers;

31 (2) if directors have not been selected or the corporation has not been formed, by an
32 incorporator; or

1 (3) if the corporation is in the hands of a receiver, trustee, or other court-appointed
2 fiduciary, by that fiduciary.

3 (g) The person executing the document shall sign it and state beneath or opposite the
4 person's signature the person's name and the capacity in which the document is signed. The
5 document may but need not contain:

6 (1) The corporate seal.

7 (2) An attestation by the secretary or an assistant secretary.

8 (3) An acknowledgment, verification, or proof.

9 (h) If the secretary of state has prescribed a mandatory form for the document under
10 RSA 293-A:1.21, the document must be in or on the prescribed form.

11 (i) The document must be delivered to the office of the secretary of state for filing and
12 shall be accompanied by one exact or conformed copy, except as provided in RSA 293-A:5.03 and
13 RSA 293-A:15.09, the correct filing fee, and any franchise tax, license fee, or penalty required by this
14 chapter or other law. Documents filed electronically need not be accompanied by an exact or
15 conformed copy, but must be accompanied by the correct filing fee, and any franchise tax, license fee,
16 or penalty required by this chapter or any similar chapter. Annual reports delivered for filing
17 pursuant to RSA 293-A:16.21 need not be accompanied by an exact or conformed copy. Delivery may
18 be made by electronic transmission if and to the extent permitted by the secretary of state. If it is
19 filed in typewritten or printed form and not transmitted electronically, the secretary of state may
20 require one exact or conformed copy to be delivered with the document (except as provided in
21 RSA 293-A:5.03 and RSA 293-A:15.09).

22 (j) Whenever a provision of this chapter permits any of the terms of a plan or a filed
23 document to be dependent on facts objectively ascertainable outside the plan or filed document, the
24 following provisions apply:

25 (1) The manner in which the facts will operate upon the terms of the plan or filed
26 document shall be set forth in the plan or filed document.

27 (2) The facts may include, but are not limited to:

28 (i) any of the following that is available in a nationally recognized news or
29 information medium either in print or electronically: statistical or market indices, market prices of
30 any security or group of securities, interest rates, currency exchange rates, or similar economic or
31 financial data;

32 (ii) a determination or action by any person or body, including the corporation or
33 any other party to a plan or filed document; or

34 (iii) the terms of, or actions taken under, an agreement to which the corporation
35 is a party, or any other agreement or document.

36 (3) As used in this subsection:

37 (i) "filed document" means a document filed with the secretary of state under any
38 provision of this chapter except RSA 293-A:15 or RSA 293-A:16.21; and

(ii) “plan” means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange.

(4) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) The name and address of any person required in a filed document.

(ii) The registered office of any entity required in a filed document.

(iii) The registered agent of any entity required in a filed document.

(iv) The number of authorized shares and designation of each class or series of shares.

(v) The effective date of a filed document.

(vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in RSA 293-A:1.20(j)(2)(i) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under RSA 293-A:1.20(j)(5) are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

293-A:1.21 Forms.

(a) The secretary of state may prescribe and furnish on request forms for:

(1) an application for a certificate of existence.

(2) a foreign corporation’s application for a certificate of authority to transact business in this state.

(3) a foreign corporation’s application for a certificate of withdrawal.

(4) and the annual report.

If the secretary of state so requires, use of these forms is mandatory.

(b) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

293-A:1.22 Filing, Service, and Copying Fees.

(a) The secretary of state shall collect the following fees for:

(1) Articles of incorporation \$ 50

(2) Amendment of articles of incorporation \$ 35

(3) Restatement of articles of incorporation with amendment of articles \$ 35

SB 205 – AS INTRODUCED
- Page 4 -

1	(4) Articles or certificate of merger or articles of	
2	share exchange	\$ 35
3	(5) Articles of domestication	No fee
4	(6) Articles of charter surrender	No fee
5	(7) Articles of nonprofit conversion	No fee
6	(8) Articles of domestication and conversion	No fee
7	(9) Articles of entity conversion	No fee
8	(10) Articles of dissolution	\$ 35
9	(11) Articles of revocation of dissolution	\$ 35
10	(12) Application for reinstatement following	
11	administrative dissolution	\$ 135
12	(13) Application for certificate of authority	\$ 50
13	(14) Application for amended certificate of authority	\$ 35
14	(15) Application for certificate of withdrawal	\$ 35
15	(16) Articles of correction	\$ 35
16	(17) Late filing	\$ 50
17	(18) Late reinstatement fee	\$ 500
18	(19) Restatement of articles of incorporation	
19	without amendment	\$ 35
20	(b) The secretary of state shall collect the following fees for:	
21	(1) Application for reserved name	\$ 15
22	(2) Notice of transfer of reserved name	\$ 15
23	(3) Application for registered name	\$ 25
24	(4) Application for renewal of registered name	\$ 25
25	(5) Statement of change of registered agent or registered	
26	office, or both	\$ 15
27	(6) Agent's statement of resignation	No fee
28	(7) Certificate of judicial dissolution	No fee
29	(8) Annual report	\$ 100
30	(9) Application for certificate of existence or authorization	\$ 5
31	(10) Application for certificate of existence or	
32	authorization in long form	\$ 10
33	(11) Any other document required or permitted	
34	to be filed by this chapter	\$ 15
35	(c) The secretary of state shall collect a fee of \$ 25 each time process is served on the	
36	secretary of state under this chapter. The party to a proceeding causing service of process is entitled	
37	to recover this fee as costs if such party prevails in the proceeding.	

(d) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) \$1 a page for copying; and

(2) \$5 for the certificate.

(e) The secretary of state may collect fees for certain services, including but not limited to

(1) Expedited service or filing requests.

(2) Direct access to corporations data.

(3) Computer tapes.

(4) Microfiche.

(5) Customized lists and reports.

(6) Corporate information via telephone-based systems or facsimile machine.

(7) Other information services.

(8) Electronic copies of data and/or images.

(f) The secretary of state may establish and collect such fees for the special services listed in subsection (e) as reasonably determined from time to time by the secretary of state.

293-A:1.23 Effective Time and Date of Document.

(a) Except as provided in subsections (b) and (c) and RSA 293-A:1.24(c), a document accepted for filing is effective:

(1) At the date and time of filing, as evidenced by such means as the secretary of state may use for the purpose of recording the date and time of filing; or

(2) at the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

(c) A document filed electronically shall be effective upon the date and time of acceptance by the secretary of state corporate database and application or as specified pursuant to subparagraph (b).

293-A:1.24 Correcting Filed Document.

(a) A domestic or foreign corporation may correct a document filed with the secretary of state if (1) the document contains an inaccuracy, or (2) the document was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) by preparing articles of correction that:

(i) describe the document (including its filing date) or attach a copy of it to the articles; and

(ii) specify the inaccuracy or defect to be corrected; and

SB 205 – AS INTRODUCED
- Page 6 -

1 (iii) correct the inaccuracy or defect; and

2 (2) by delivering the articles to the secretary of state for filing.

3 (c) Articles of correction are effective on the effective date of the document they correct
4 except as to persons relying on the uncorrected document and adversely affected by the correction.
5 As to those persons, articles of correction are effective when filed.

6 293-A:1.25 Filing Duty of Secretary of State.

7 (a) If a document delivered to the office of the secretary of state for filing satisfies the
8 requirements of RSA 293-A:1.20, the secretary of state shall file it.

9 (b) The secretary of state files a document by stamping or otherwise endorsing "Filed,"
10 together with his or her name and official title and the date of receipt on both the original and the
11 document copy. After filing a document, except as provided in RSA 293-A:5.03 and RSA 293-A:15.09,
12 the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy
13 of the document with an acknowledgement of the date of filing.

14 (c) If the secretary of state refuses to file a document, it shall be returned to the domestic
15 or foreign corporation or its representative within 30 days after the document was delivered,
16 together with a brief, written explanation of the reason for the refusal.

17 (d) The secretary of state's duty to file documents under this section is ministerial. The
18 secretary's filing or refusing to file a document does not:

19 (1) affect the validity or invalidity of the document in whole or part;

20 (2) relate to the correctness or incorrectness of information contained in the
21 document; or

22 (3) create a presumption that the document is valid or invalid or that information
23 contained in the document is correct or incorrect.

24 (e) The secretary of state and those acting on his or her behalf shall incur no liability,
25 either personally or on behalf of the state of New Hampshire, as a result of defects or inconsistencies
26 in the documents recorded by them under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301,
27 RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349 or as a result of negligent
28 acts or omissions in the handling and recording of those documents.

29 293-A:1.26 Appeal From Secretary of State's Refusal to File Document.

30 (a) If the secretary of state refuses to file a document delivered for filing, the domestic or
31 foreign corporation may appeal the refusal within 30 days after the return of the document to the
32 superior court of the county where the corporation's principal office (or, if none in this state, its
33 registered office) is or will be located. The appeal is commenced by petitioning the court to compel
34 filing the document and by attaching to the petition the document and the secretary of state's
35 explanation of his or her refusal to file.

36 (b) The court may summarily order the secretary of state to file the document or take
37 other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

293-A:1.27 Evidentiary Effect of Copy of Filed Document. A certificate from the secretary of state delivered attached or affixed to a copy of a document filed by the secretary of state, bearing his or her signature and the seal of this state (both of which may be in facsimile) is conclusive evidence that the original document is on file with the secretary of state.

293-A:1.28 Certificate of Existence.

(a) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) that:

(i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(3) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(4) that its most recent annual report has been filed with the secretary of state;

(5) that articles of dissolution have not been filed; and

(6) other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

293-A:1.29 Penalty for Signing False Document.

(a) A person commits an offense by signing a document that the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

(b) An offense under this section is a misdemeanor.

Part C

Secretary of State

293-A:1.30 Powers. The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

293-A:1.31 to 293-A:1.34 [Repealed.]

293-A:1.35 Assessment and Collection of Annual Fees. It shall be the duty of the secretary of state to collect all filing fees and penalties imposed by, or assessed in accordance with, this chapter.

1 293-A:1.36 Penalties Imposed. Each corporation, domestic or foreign, that fails or refuses to file
2 its annual report or to pay all associated fees related thereto, or both, for any year on or before April
3 1 shall be subject to an additional fee as set out in RSA 293-A:1.22(a)(12).

4 293-A:1.37 Administration.

5 (a) [Repealed.]

6 (b) The state treasurer shall pay the expenses of administering this chapter, RSA 382-
7 A:9, and other information technology costs of the secretary of state out of any money in the treasury
8 not otherwise appropriated until the fees collected pursuant to RSA 293-A:1.22(a), RSA 382-A:9, and
9 other information technology services have been received by him or her. Thereafter he or she shall
10 pay the expenses of administering this chapter, RSA 382-A:9, and other information technology costs
11 of the secretary of state out of the fees collected under RSA 293-A:1.22(a) and RSA 382-A:9-525 and
12 shall reimburse the treasury for previous expenses paid by him or her. The governor is authorized to
13 draw his warrant for the sums authorized by this section out of any money in the treasury not
14 otherwise appropriated.

15 (c) Fees collected by the secretary of state pursuant to RSA 293-A:1.22(e) and RSA 382-
16 A:9-525 shall be deposited in the same manner as fees collected pursuant to RSA 293-A:1.22(a) and
17 shall be available to the secretary of state to administer the provisions of this chapter and RSA 382-
18 A:9 in the same manner as provided in subsection (b) of this section.

19 293-A:1.38 Interrogatories by Secretary of State, Penalties.

20 (a) The secretary of state may propound to any corporation, domestic or foreign, subject
21 to the provisions of this chapter, and to any officer or director of the corporation, interrogatories as
22 may be reasonably necessary and proper to enable him or her to ascertain whether the corporation
23 has complied with all the provisions of this chapter applicable to the corporation. Interrogatories
24 shall be answered within 30 days after the mailing, or within such additional time as shall be fixed
25 by the secretary of state. The answers to the interrogatories shall be full and complete and shall be
26 made in writing and under oath. If the interrogatories are directed to an individual they shall be
27 answered by him or her, and if directed to a corporation they shall be answered by its president, vice
28 president, secretary, or assistant secretary. The secretary of state shall not need to record any
29 document to which the interrogatories relate until the interrogatories are answered as provided in
30 this section, and then not if the answers to the interrogatories disclose that the document is not in
31 conformity with the provisions of this chapter. The secretary of state shall certify to the attorney
32 general, for such action as the attorney general may deem appropriate, all interrogatories and
33 answers to interrogatories which disclose a violation of any of the provisions of this chapter.

34 (b) The attorney general may petition the superior court of the county in which the
35 individual to whom interrogatories are directed resides, or in which the corporation has its registered
36 office, or of Hillsborough county if the individual or corporation does not reside in or maintain a
37 registered office in this state to seek enforcement of the interrogatories. To the extent that they are

not in conflict with this section, all rules of the superior court relating to interrogatories shall be applicable to the interrogatories propounded by the secretary of state pursuant to this section.

(c) Interrogatories propounded by the secretary of state and the answers to the interrogatories shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained from the answers except insofar as his official duty may require it to be made public or in the event the interrogatories or their answers are required for evidence if any criminal proceedings or in any other action by the state.

(d) Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him or her by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to the officer or director to be false in any material respect, shall be guilty of a misdemeanor.

Part D

Definitions

293-A:1.40 Act Definitions.

(a) In this chapter:

(1) “Articles of incorporation” means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the secretary of state under any provision of this chapter except RSA 293-A:16.21. If an amendment of the articles or any other document filed under this chapter restates the articles in their entirety, thenceforth the “articles” shall not include any prior documents.

(2) “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) “Conspicuous” means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, capitals, or underlined is conspicuous.

(4) “Corporation,” “domestic corporation” or “domestic business corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(5) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with RSA 293-A:1.41, by electronic transmission.

(6) “Distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

1 (6A) “Document” means (i) any tangible medium on which information is inscribed,
2 and includes any writing or written instrument, or (ii) an electronic record.

3 (6B) “Domestic unincorporated entity” means an unincorporated entity whose
4 internal affairs are governed by the laws of this state.

5 (7) “Effective date of notice” is defined in RSA 293-A:1.41(i).

6 (7A) “Electronic” means relating to technology having electrical, digital, magnetic,
7 wireless, optical, electromagnetic, or similar capabilities.

8 (7B) “Electronic record” means information that is stored in an electronic or other
9 medium and is retrievable in paper form through an automated process used in conventional
10 commercial practice, unless otherwise authorized in accordance with RSA 293-A:1.41(j).

11 (7C) “Electronic transmission” or “electronically transmitted,” means any form or
12 process of communication, not directly involving the physical transfer of paper or another tangible
13 medium, which (a) is suitable for the retention, retrieval, and reproduction of information by the
14 recipient, and (b) is retrievable in paper form by the recipient through an automated process used in
15 conventional commercial practice, unless otherwise authorized in accordance with RSA 293-A:1.41(j).

16 (7D) “Eligible entity” means a domestic or foreign unincorporated entity or a
17 domestic or foreign nonprofit corporation.

18 (7E) “Eligible interests” means interests or memberships.

19 (8) “Employee” includes an officer but not a director. A director may accept duties
20 that make the director also an employee.

21 (9) “Entity” includes domestic and foreign business corporation; domestic and foreign
22 nonprofit corporation; estate; trust; domestic and foreign unincorporated entity; and state,
23 United States, and foreign government.

24 (9A) The phrase “facts objectively ascertainable” outside of a filed document or plan
25 is defined in RSA 293-A:1.20(j).

26 (9AA) “Expenses” means reasonable expenses of any kind that are incurred in
27 connection with a matter.

28 (9B) “Filing entity” means an unincorporated entity that is of a type that is created
29 by filing a public organic document.

30 (10) “Foreign corporation” means a corporation incorporated under a law other than
31 the law of this state, which would be a business corporation if incorporated under the laws of this
32 state.

33 (10A) “Foreign nonprofit corporation” means a corporation incorporated under a law
34 other than the law of this state, which would be a nonprofit corporation if incorporated under the
35 laws of this state.

36 (10B) “Foreign unincorporated entity” means an unincorporated entity whose
37 internal affairs are governed by an organic law of a jurisdiction other than this state.

SB 205 – AS INTRODUCED
- Page 11 -

(11) “Governmental subdivision” includes authority, county, district, and municipality.

(12) “Includes” denotes a partial definition.

(13) “Individual” means a natural person and includes the estate of an incompetent or deceased individual.

(13A) “Interest” means either or both of the following rights under the organic law of an unincorporated entity:

(i) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(ii) the right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy or person responsible for managing its business and affairs.

(13B) “Interest holder” means a person who holds of record an interest.

(14) “Means” denotes an exhaustive definition.

(14A) “Membership” means the rights of a member in a domestic or foreign nonprofit corporation.

(14B) “Nonfiling entity” means an unincorporated entity that is of a type that is not created by filing a public organic document.

(14C) “Nonprofit corporation” or “domestic nonprofit corporation” means a corporation incorporated under the laws of this state and subject to the provisions of RSA 292.

(15) “Notice” is defined in RSA 293-A:1.41.

(15A) “Organic document” means a public organic document or a private organic document.

(15B) “Organic law” means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

(15C) “Owner liability” means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(i) solely by reason of the person’s status as a shareholder, member, or interest holder; or

(ii) by the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity.

(16) “Person” includes an individual and an entity.

(17) “Principal office” means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

1 (17A) “Private organic document” means any document (other than the public
2 organic document, if any) that determines the internal governance of an unincorporated entity.
3 Where a private organic document has been amended or restated, the term means the private
4 organic document as last amended or restated.

5 (17B) “Public organic document” means the document, if any, that is filed of public
6 record to create an unincorporated entity. Where a public organic document has been amended or
7 restated, the term means the public organic document as last amended or restated.

8 (18) “Proceeding” includes civil suit and criminal, administrative, and investigatory
9 action.

10 (18A) “Public corporation” means a corporation that has shares listed on a national
11 securities exchange or regularly traded in a market maintained by one or more members of a
12 national securities association.

13 (18B) “Qualified director” is defined in RSA 293-A:1.43.

14 (19) “Record date” means the date established on which a corporation determines the
15 identity of its shareholders and their shareholdings for purposes of this chapter. The determinations
16 shall be made as of the close of business on the record date unless another time for doing so is
17 specified when the record date is fixed.

18 (20) “Secretary” means the corporate officer to whom the board of directors has
19 delegated responsibility under RSA 293-A:8.40(c) for custody of the minutes of the meetings of the
20 board of directors and of the shareholders and for authenticating records of the corporation.

21 (21) “Shareholder” means the person in whose name shares are registered in the
22 records of a corporation or the beneficial owner of shares to the extent of the rights granted by a
23 nominee certificate on file with a corporation.

24 (22) “Shares” means the units into which the proprietary interests in a corporation
25 are divided.

26 (22A) “Sign” or “signature” means, with present intent to authenticate or adopt a
27 document:

28 (i) to execute or adopt a tangible symbol to a document, and includes any
29 manual, facsimile, or conformed signature; or

30 (ii) to attach to or logically associate with an electronic transmission an
31 electronic sound, symbol, or process, and includes an electronic signature in an electronic
32 transmission.

33 (23) “State,” when referring to a part of the United States, includes a state and
34 commonwealth (and their agencies and governmental subdivisions) and a territory and insular
35 possession (and their agencies and governmental subdivisions) of the United States.

36 (24) “Subscriber” means a person who subscribes for shares in a corporation,
37 whether before or after incorporation.

1 (24A) “Unincorporated entity” means an organization or artificial legal person that
2 either has a separate legal existence or has the power to acquire an estate in real property in its own
3 name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an
4 estate, a trust, a state, the United States, or a foreign government. The term includes a general
5 partnership, limited liability company, limited partnership, business trust, joint stock association,
6 and unincorporated nonprofit association.

7 (25) “United States” includes district, authority, bureau, commission, department,
8 and any other agency of the United States.

9 (26) “Voting group” means all shares of one or more classes or series that under the
10 articles of incorporation or this chapter are entitled to vote and be counted together collectively on a
11 matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this
12 chapter to vote generally on the matter are for that purpose a single voting group.

13 (27) “Voting power” means the current power to vote in the election of directors.

14 (28) “Writing” or “written” means any information in the form of a document.

15 293-A:1.41 Notices and Other Communications.

16 (a) Notice under this chapter must be in writing unless oral notice is reasonable in the
17 circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or
18 other communication under this chapter must be in English.

19 (b) A notice or other communication may be given or sent by any method of delivery,
20 except that electronic transmissions must be in accordance with this section. If these methods of
21 delivery are impracticable, a notice or other communication may be communicated by a newspaper of
22 general circulation in the area where published, or by radio, television, or other form of public
23 broadcast communication.

24 (c) Notice or other communication to a domestic or foreign corporation authorized to
25 transact business in this state may be delivered to its registered agent at its registered office or to
26 the secretary of the corporation at its principal office shown in its most recent annual report or, in
27 the case of a foreign corporation that has not yet delivered an annual report, in its application for a
28 certificate of authority.

29 (d) Notice or other communications may be delivered by electronic transmission if
30 consented to by the recipient or if authorized by subsection (j).

31 (e) Any consent under subsection (d) may be revoked by the person who consented by
32 written or electronic notice to the person to whom the consent was delivered. Any such consent is
33 deemed revoked if (1) the corporation is unable to deliver 2 consecutive electronic transmissions
34 given by the corporation in accordance with such consent, and (2) such inability becomes known to
35 the secretary or an assistant secretary of the corporation or to the transfer agent, or other person
36 responsible for the giving of notice or other communications; provided, however, the inadvertent
37 failure to treat such inability as a revocation shall not invalidate any meeting or other action.

1 (f) Unless otherwise agreed between the sender and the recipient, an electronic
2 transmission is received when:

3 (1) it enters an information processing system that the recipient has designated or
4 uses for the purposes of receiving electronic transmissions or information of the type sent, and from
5 which the recipient is able to retrieve the electronic transmission; and

6 (2) it is in a form capable of being processed by that system.

7 (g) Receipt of an electronic acknowledgement from an information processing system
8 described in subsection (f)(1) establishes that an electronic transmission was received but, by itself,
9 does not establish that the content sent corresponds to the content received.

10 (h) An electronic transmission is received under this section even if no individual is
11 aware of its receipt.

12 (i) Notice or other communication, if in a comprehensible form or manner, is effective at
13 the earliest of the following:

14 (1) if in physical form, the earliest of when it is actually received, or when it is left at:

15 (i) a shareholder's address shown on the corporation's record of shareholders
16 maintained by the corporation under RSA 293-A:16.01(c);

17 (ii) a director's residence or usual place of business; or

18 (iii) the corporation's principal place of business;

19 (2) if mailed postage prepaid and correctly addressed to a shareholder, upon deposit
20 in the United States mail;

21 (3) if mailed by United States mail postage prepaid and correctly addressed to a
22 recipient other than a shareholder, the earliest of when it is actually received, or:

23 (i) if sent by registered or certified mail, return receipt requested, the date shown
24 on the return receipt signed by or on behalf of the addressee; or

25 (ii) five days after it is deposited in the United States mail;

26 (4) if an electronic transmission, when it is received as provided in subsection (f); and

27 (5) if oral, when communicated.

28 (j) A notice or other communication may be in the form of an electronic transmission that
29 cannot be directly reproduced in paper form by the recipient through an automated process used in
30 conventional commercial practice only if (i) the electronic transmission is otherwise retrievable in
31 perceivable form, and (ii) the sender and the recipient have consented in writing to the use of such
32 form of electronic transmission.

33 (k) If this chapter prescribes requirements for notices or other communications in
34 particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe
35 requirements for notices or other communications, not inconsistent with this section or other
36 provisions of this chapter, those requirements govern. The articles of incorporation or bylaws may
37 authorize or require delivery of notices of meetings of directors by electronic transmission.

1 293-A:1.42 Number of Shareholders.

2 (a) For purposes of this chapter, the following identified as a shareholder in a
3 corporation's current record of shareholders constitutes one shareholder:

4 (1) three or fewer co-owners;

5 (2) a corporation, partnership, trust, estate, or other entity;

6 (3) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate,
7 or account.

8 (b) For purposes of this chapter, shareholdings registered in substantially similar names
9 constitute one shareholder if it is reasonable to believe that the names represent the same person.

10 293-A:1.43 Qualified Director.

11 (a) A "qualified director" is a director who, at the time action is to be taken under:

12 (1) RSA 293-A:7.44, does not have (i) a material interest in the outcome of the
13 proceeding, or (ii) a material relationship with a person who has such an interest;

14 (2) RSA 293-A:8.53 or RSA 293-A:8.55, (i) is not a party to the proceeding, (ii) is not a
15 director as to whom a transaction is a director's conflicting interest transaction or who sought a
16 disclaimer of the corporation's interest in a business opportunity under RSA 293-A:8.70, which
17 transaction or disclaimer is challenged in the proceeding, and (iii) does not have a material
18 relationship with a director described in either clause (i) or clause (ii) of this subsection (a)(2);

19 (3) RSA 293-A:8.62, is not a director (i) as to whom the transaction is a director's
20 conflicting interest transaction, or (ii) who has a material relationship with another director as to
21 whom the transaction is a director's conflicting interest transaction; or

22 (4) RSA 293-A:8.70, would be a qualified director under subsection (a)(3) if the
23 business opportunity were a director's conflicting interest transaction.

24 (b) For purposes of this section:

25 (1) "material relationship" means a familial, financial, professional, employment, or
26 other relationship that would reasonably be expected to impair the objectivity of the director's
27 judgment when participating in the action to be taken; and

28 (2) "material interest" means an actual or potential benefit or detriment (other than one
29 which would devolve on the corporation or the shareholders generally) that would reasonably be expected
30 to impair the objectivity of the director's judgment when participating in the action to be taken.

31 (c) The presence of one or more of the following circumstances shall not automatically
32 prevent a director from being a qualified director:

33 (1) nomination or election of the director to the current board by any director who is
34 not a qualified director with respect to the matter (or by any person that has a material relationship
35 with that director), acting alone or participating with others;

36 (2) service as a director of another corporation of which a director who is not a
37 qualified director with respect to the matter (or any individual who has a material relationship with
38 that director), is or was also a director; or

(3) with respect to action to be taken under RSA 293-A:7.44, status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

293-A:1.44 Householding.

(a) A corporation has delivered written notice or any other report or statement under this chapter, the articles of incorporation or the bylaws to all shareholders who share a common address if:

(1) The corporation delivers one copy of the notice, report, or statement to the common address;

(2) The corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(3) Each of those shareholders consents to delivery of a single copy of such notice, report, or statement to the shareholders' common address. Any such consent shall be revocable by any of such shareholders who deliver written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

(b) Any shareholder who fails to object by written notice to the corporation, within 60 days of written notice by the corporation of its intention to send single copies of notices, reports, or statements to shareholders who share a common address as permitted by subsection (a), shall be deemed to have consented to receiving such single copy at the common address.

Incorporation

293-A:2.01 Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

293-A:2.02 Articles of Incorporation.

(a) The articles of incorporation must set forth:

(1) a corporate name for the corporation that satisfies the requirements of RSA 293-A:4.01;

(2) the number of shares the corporation is authorized to issue;

(3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office; and

(4) the name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) the names and addresses of the individuals who are to serve as the initial directors;

(2) provisions not inconsistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

1 (ii) managing the business and regulating the affairs of the corporation;
2 (iii) defining, limiting, and regulating the powers of the corporation, its board of
3 directors, and shareholders;

4 (iv) a par value for authorized shares or classes of shares;

5 (v) the imposition of personal liability on shareholders for the debts of the
6 corporation to a specified extent and upon specified conditions;

7 (3) any provision that under this chapter is required or permitted to be set forth in
8 the bylaws;

9 (4) a provision eliminating or limiting the liability of a director, an officer, or both, to
10 the corporation or its shareholders for money damages for any action taken, or any failure to take
11 any action, as a director or an officer, except liability for (A) the amount of a financial benefit received
12 by a director or an officer to which the director or officer is not entitled; (B) an intentional infliction
13 of harm on the corporation or the shareholders; (C) a violation of RSA 293-A:8.33; or (D) an
14 intentional violation of criminal law; and

15 (5) a provision permitting or making obligatory indemnification of a director for
16 liability (as defined in RSA 293-A:8.50(a)(3)) to any person for any action taken, or any failure to
17 take any action, as a director, except liability for (A) receipt of a financial benefit to which the
18 director is not entitled, (B) an intentional infliction of harm on the corporation or its shareholders,
19 (C) a violation of RSA 293-A:8.33, or (D) an intentional violation of criminal law.

20 (c) The articles of incorporation need not set forth any of the corporate powers
21 enumerated in this chapter.

22 (d) Provisions of the articles of incorporation may be made dependent upon facts
23 objectively ascertainable outside the articles of incorporation in accordance with RSA 293-A:1.20(j).

24 293-A:2.03 Incorporation.

25 (a) Unless an effective time or delayed effective time and date are specified in accordance
26 with RSA 293-A:1.23, the corporate existence begins when the articles of incorporation are filed.

27 (b) The secretary of state's filing of the articles of incorporation is conclusive proof that
28 the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the
29 state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

30 293-A:2.04 Liability for Preincorporation Transactions. All persons purporting to act as or on
31 behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and
32 severally liable for all liabilities created while so acting.

33 293-A:2.05 Organization of Corporation.

34 (a) After incorporation:

35 (1) if initial directors are named in the articles of incorporation, the initial directors
36 shall hold an organizational meeting, at the call of a majority of the directors, to complete the
37 organization of the corporation by appointing officers, adopting bylaws, and carrying on any other
38 business brought before the meeting;

1 (2) if initial directors are not named in the articles, the incorporator or incorporators
2 shall hold an organizational meeting at the call of a majority of the incorporators:

3 (i) to elect directors and complete the organization of the corporation; or
4 (ii) to elect a board of directors who shall complete the organization of the
5 corporation.

6 (b) Action required or permitted by this chapter to be taken by incorporators at an
7 organizational meeting may be taken without a meeting if the action taken is evidenced by one or
8 more written consents describing the action taken and signed by each incorporator.

9 (c) An organizational meeting may be held in or out of this state.

10 293-A:2.06 Bylaws.

11 (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for
12 the corporation.

13 (b) The bylaws of a corporation may contain any provision that is not inconsistent with
14 law or the articles of incorporation.

15 (c) The bylaws may contain one or both of the following provisions:

16 (1) A requirement that if the corporation solicits proxies or consents with respect to an
17 election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to
18 the extent and subject to such procedures or conditions as are provided in the bylaws, one or more
19 individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

20 (2) A requirement that the corporation reimburse the expenses incurred by a
21 shareholder in soliciting proxies or consents in connection with an election of directors, to the extent
22 and subject to such procedures or conditions as are provided in the bylaws, provided that no bylaw so
23 adopted shall apply to elections for which any record date precedes its adoption.

24 (d) Notwithstanding RSA 293-A:10.20(b)(2), the shareholders in amending, repealing, or
25 adopting a bylaw described in subsection (c) may not limit the authority of the board of directors to
26 amend or repeal any condition or procedure set forth in or to add any procedure or condition to such
27 a bylaw in order to provide for a reasonable, practicable, and orderly process.

28 293-A:2.07 Emergency Bylaws.

29 (a) Unless the articles of incorporation provide otherwise, the board of directors of a
30 corporation may adopt bylaws to be effective only in an emergency defined in subsection (d). The
31 emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all
32 provisions necessary for managing the corporation during the emergency, including:

33 (1) procedures for calling a meeting of the board of directors;

34 (2) quorum requirements for the meeting; and

35 (3) designation of additional or substitute directors.

36 (b) All provisions of the regular bylaws consistent with the emergency bylaws remain
37 effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Purposes and Powers of Corporations

293-A:3.01 Purposes.

(a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

293-A:3.02 General Powers.

(a) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

(7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;

(11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

293-A:3.03 Emergency Powers.

(a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

(1) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) one or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

293-A:3.04 Ultra Vires.

SB 205 – AS INTRODUCED
- Page 21 -

(a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) in a proceeding by a shareholder against the corporation to enjoin the act;

(2) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) in a proceeding by the attorney general under RSA 293-A:14.30.

(c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

Name

293-A:4.01 Corporate Name.

(a) A corporate name:

(1) must contain the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” or words or abbreviations of like import in another language; and

(2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RSA 293-A:3.01 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(1) the name of an entity incorporated, authorized, formed, or registered to transact business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349;

(2) a name reserved or registered under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C;

(3) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof;

(5) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization; and

(6) The name “farmers’ market” unless the entity meets the definition of “farmers’ market” established in RSA 21:34-a, V.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

1 (1) the holder or holders of the name as described in subsection (b) gives written
2 consent to use the name that is not distinguishable from or likely to be confused with or mistaken for
3 the name of the applying corporation; or if the name is the same, one or more words are added to the
4 name to make the new name distinguishable from the other name;

5 (2) the other entity consents to the use in writing and submits an undertaking in
6 form satisfactory to the secretary of state to change its name to a name that is distinguishable upon
7 the records of the secretary of state from the name of the applying corporation; or

8 (3) the applicant delivers to the secretary of state a certified copy of the final
9 judgment of a court of competent jurisdiction establishing the applicant's right to use the name
10 applied for in this state.

11 (d) A corporation may use the name (including the fictitious name) of another domestic
12 or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or
13 registered to transact business in this state and the proposed user corporation:

14 (1) has merged with the other entity;

15 (2) has been formed by reorganization of the other entity; or

16 (3) has acquired all or substantially all of the assets, including the name, of the other
17 entity.

18 (e) This chapter does not control the use of fictitious names.

19 (f) Nothing in this section would prohibit the owner or owners of a trade name registered
20 under RSA 349 to form a domestic corporation under the same name as the trade name.

21 (g) The secretary of state and those acting on his or her behalf shall incur no liability,
22 either personally or on behalf of the state of New Hampshire, as a result of negligent acts or
23 omissions in the reservation or registration of any name under this chapter or any other name
24 registration or reservation statute, including but not limited to RSA 349, or the handling and
25 recording of documents pertaining to such reservation or registration.

26 293-A:4.02 Reserved Name.

27 (a) A person may reserve the exclusive use of a corporate name, including a fictitious
28 name for a foreign corporation whose corporate name is not available, by delivering an application to
29 the secretary of state for filing. The application must set forth the name and address of the applicant
30 and the name proposed to be reserved. If the secretary of state finds that the corporate name applied
31 for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a
32 nonrenewable 120-day period.

33 (b) The owner of a reserved corporate name may transfer the reservation to another
34 person by delivering to the secretary of state a signed notice of the transfer that states the name and
35 address of the transferee.

36 293-A:4.03 Registered Name.

(a) A foreign corporation may register its corporate name, or its corporate name with any addition required by RSA 293-A:15.06, if the name is distinguishable upon the records of the secretary of state from the corporate names that are not available under RSA 293-A:4.01(b).

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by RSA 293-A:15.06, by delivering to the secretary of state for filing an application:

(1) setting forth its corporate name, or its corporate name with any addition required by RSA 293-A:15.06, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(2) accompanied by a certificate of good standing (or a document of similar import) from the state or country of incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (b), between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Office and Agent

293-A:5.01 Registered Office and Registered Agent.

(a) Each corporation must continuously maintain in this state:

(1) a registered office that may be the same as any of its places of business; and

(2) a registered agent, who may be:

(i) an individual who resides in this state and whose business office is identical with the registered office;

(ii) a domestic or foreign corporation or other entity incorporated, authorized, formed, or registered to transact business in New Hampshire under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349 whose business office is identical with the registered office and, in the case of a foreign corporation or foreign eligible entity, is authorized to transact business in the state.

293-A:5.02 Change of Registered Office or Registered Agent.

(a) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- 1 (1) the name of the corporation;
- 2 (2) the street address of its current registered office;
- 3 (3) if the current registered office is to be changed, the street address of the new
- 4 registered office;
- 5 (4) the name of its current registered agent;
- 6 (5) if the current registered agent is to be changed, the name of the new registered
- 7 agent; and
- 8 (6) that after the change or changes are made, the street addresses of its registered
- 9 office and the business office of its registered agent will be identical.

10 (b) If the street address of a registered agent's business office changes, the agent may

11 change the street address of the registered office of any corporation for which the agent is the

12 registered agent by delivering a signed written notice of the change to the corporation and delivering

13 to the secretary of state for filing a signed statement that complies with the requirements of

14 subsection (a) and recites that the corporation has been notified of the change.

15 293-A:5.03 Resignation of Registered Agent.

16 (a) A registered agent may resign the agent's appointment by signing and delivering to

17 the secretary of state for filing the signed original and one exact or conformed copy of a statement of

18 resignation. The statement may include a statement that the registered office is also discontinued.

19 (b) After filing the statement the secretary of state shall mail one copy to the registered

20 office (if not discontinued) and the other copy to the corporation at its principal office.

21 (c) The agency appointment is terminated, and the registered office discontinued if so

22 provided, on the 31st day after the date on which the statement was filed.

23 293-A:5.04 Service on Corporation.

24 (a) A corporation's registered agent is the corporation's agent for service of process,

25 notice, or demand required or permitted by law to be served on the corporation.

26 (b) If a corporation has no registered agent, or the agent cannot with reasonable

27 diligence be served, the corporation may be served by registered or certified mail, return receipt

28 requested, addressed to the secretary of the corporation at its principal office. Service is perfected

29 under this subsection at the earliest of:

- 30 (1) the date the corporation receives the mail;
- 31 (2) the date shown on the return receipt, if signed on behalf of the corporation; or
- 32 (3) five days after its deposit in the U.S. Mail, as evidenced by the postmark, if
- 33 mailed postpaid and correctly addressed.

34 (c) This section does not prescribe the only means, or necessarily the required means of

35 serving a corporation.

36 Shares and Distributions

37 Part A

38 Shares

1 293-A:6.01 Authorized Shares.

2 (a) The articles of incorporation must set forth any classes of shares and series of shares
3 within a class, and the number of shares of each class and series, that the corporation is authorized
4 to issue. If more than one class or series of shares is authorized, the articles of incorporation must
5 prescribe a distinguishing designation for each class or series and must describe, prior to the
6 issuance of shares of a class or series, the terms, including the preferences, rights, and limitations, of
7 that class or series. Except to the extent varied as permitted by this section, all shares of a class or
8 series must have terms, including preferences, rights, and limitations that are identical with those of
9 other shares of the same class or series.

10 (b) The articles of incorporation must authorize:

11 (1) one or more classes or series of shares that together have unlimited voting rights,
12 and

13 (2) one or more classes or series of shares (which may be the same class or classes as
14 those with voting rights) that together are entitled to receive the net assets of the corporation upon
15 dissolution.

16 (c) The articles of incorporation may authorize one or more classes or series of shares
17 that:

18 (1) have special, conditional, or limited voting rights, or no right to vote, except to the
19 extent otherwise provided by this chapter;

20 (2) are redeemable or convertible as specified in the articles of incorporation:

21 (i) at the option of the corporation, the shareholder, or another person or upon
22 the occurrence of a specified event;

23 (ii) for cash, indebtedness, securities, or other property; and

24 (iii) at prices and in amounts specified, or determined in accordance with a
25 formula;

26 (3) entitle the holders to distributions calculated in any manner, including dividends
27 that may be cumulative, noncumulative, or partially cumulative; or

28 (4) have preference over any other class or series of shares with respect to
29 distributions, including distributions upon the dissolution of the corporation.

30 (d) Terms of shares may be made dependent upon facts objectively ascertainable outside
31 the articles of incorporation in accordance with RSA 293-A:1.20(j).

32 (e) Any of the terms of shares may vary among holders of the same class or series so long
33 as such variations are expressly set forth in the articles of incorporation.

34 (f) The description of the preferences, rights and limitations of classes or series of shares
35 in RSA 293-A:6.01(c) is not exhaustive.

36 293-A:6.02 Terms of Class or Series Determined by Board of Directors.

37 (a) If the articles of incorporation so provide, the board of directors is authorized, without
38 shareholder approval, to:

(1) classify any authorized and unissued shares into one or more classes or into one or more series within a class,

(2) reclassify any authorized and unissued shares of any class into one or more classes or into one or more series within one or more classes, or

(3) reclassify any authorized and unissued shares of any series of any class into one or more classes or into one or more series within a class.

(b) If the board of directors acts pursuant to subsection (a), it must determine the terms, including the preferences, rights and limitations, to the same extent permitted under RSA 293-A:6.01, of:

(1) any class of shares before the issuance of any shares of that class, or

(2) any series within a class before the issuance of any shares of that series.

(c) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment setting forth the terms determined under RSA 293-A:6.02(a).

293-A:6.03 Issued and Outstanding Shares.

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of RSA 293-A:6.03(c) and RSA 293-A:6.40.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

293-A:6.04 Fractional Shares.

(a) A corporation may:

(1) issue fractions of a share or pay in money the value of fractions of a share;

(2) arrange for disposition of fractional shares by the shareholders;

(3) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled “scrip” and must contain the information required by RSA 293-A:6.25(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

1 (1) that the scrip will become void if not exchanged for full shares before a specified
2 date; and

3 (2) that the shares for which the scrip is exchangeable may be sold and the proceeds
4 paid to the scripholders.

5 Part B

6 Issuance of Shares

7 293-A:6.20 Subscription for Shares Before Incorporation.

8 (a) A subscription for shares entered into before incorporation is irrevocable for 6 months
9 unless the subscription agreement provides a longer or shorter period or all the subscribers agree to
10 revocation.

11 (b) The board of directors may determine the payment terms of subscription for shares
12 that were entered into before incorporation, unless the subscription agreement specifies them. A call
13 for payment by the board of directors must be uniform so far as practicable as to all shares of the
14 same class or series, unless the subscription agreement specifies otherwise.

15 (c) Shares issued pursuant to subscriptions entered into before incorporation are fully
16 paid and nonassessable when the corporation receives the consideration specified in the subscription
17 agreement.

18 (d) If a subscriber defaults in payment of money or property under a subscription
19 agreement entered into before incorporation, the corporation may collect the amount owed as any
20 other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation
21 may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20 days
22 after the corporation sends a written demand for payment to the subscriber.

23 (e) A subscription agreement entered into after incorporation is a contract between the
24 subscriber and the corporation subject to RSA 293-A:6.21.

25 293-A:6.21 Issuance of Shares.

26 (a) The powers granted in this section to the board of directors may be reserved to the
27 shareholders, either exclusively or concurrently with the powers of the directors, by the articles of
28 incorporation.

29 (b) The board of directors may authorize shares to be issued for consideration consisting
30 of any tangible or intangible property or benefit to the corporation, including cash, promissory notes,
31 services performed, contracts for services to be performed, or other securities of the corporation.

32 (c) Before the corporation issues shares, the board of directors must determine that the
33 consideration received or to be received for shares to be issued is adequate. That determination by
34 the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares
35 relates to whether the shares are validly issued, fully paid, and nonassessable.

36 (d) The articles of incorporation may limit the type or specify the minimum amount of
37 consideration for which the shares of any class or series may be issued. A reference in the articles of
38 incorporation to par value shall not, by itself, be deemed to be a specification of the minimum amount.

1 (e) Notwithstanding RSA 293-A:6.21(d), when the corporation receives the consideration
2 for which the board of directors authorized the issuance of shares, the shares issued therefore are
3 fully paid and nonassessable.

4 (f) The corporation may place in escrow shares issued for a contract for future services or
5 benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and
6 may credit distributions in respect of the shares against their purchase price, until the services are
7 performed, the note is paid, or the benefits received. If the services are not performed, the note is not
8 paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited
9 may be cancelled in whole or part.

10 293-A:6.22 Liability of Shareholders.

11 (a) A purchaser from a corporation of its own shares is not liable to the corporation or its
12 creditors with respect to the shares except to pay the consideration for which the shares were
13 authorized to be issued (see RSA 293-A:6.21) or specified in the subscription agreement (see
14 RSA 293-A:6.20).

15 (b) Unless otherwise provided in the articles of incorporation, a shareholder of a
16 corporation is not personally liable for the acts or debts of the corporation except that he or she may
17 become personally liable by reason of his or her own acts or conduct.

18 293-A:6.23 Share Dividends.

19 (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata
20 and without consideration to the corporation's shareholders or to the shareholders of one or more
21 classes or series. An issuance of shares under this subsection is a share dividend.

22 (b) Shares of one class or series may not be issued as a share dividend in respect of
23 shares of another class or series unless (1) the articles of incorporation so authorize, (2) a majority of
24 the votes entitled to be cast by the class or series to be issued approve the issue, or (3) there are no
25 outstanding shares of the class or series to be issued.

26 (c) If the board of directors does not fix the record date for determining shareholders
27 entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

28 293-A:6.24 Share Options.

29 (a) A corporation may issue rights, options, or warrants for the purchase of shares or
30 other securities of the corporation. The board of directors shall determine (i) the terms upon which
31 the rights, options, or warrants are issued and (ii) the terms, including the consideration for which
32 the shares or other securities are to be issued. The authorization by the board of directors for the
33 corporation to issue such rights, options, or warrants constitutes authorization of the issuance of the
34 shares or other securities for which the rights, options or warrants are exercisable.

35 (b) The terms and conditions of such rights, options, or warrants, including those
36 outstanding on the effective date of this section, may include, without limitation, restrictions or
37 conditions that:

(1) preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee or transferees of any such person or persons, or that preclude or limit the exercise, transfer or receipt based on such other factors, including the nature or identity of such person or persons, as the directors determine to be reasonable and in the best interests of the corporation, or

(2) invalidate or void such rights, options, or warrants held by any such person or persons or any such transferee or transferees.

(c) The board of directors may authorize one or more officers to (1) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares and (2) determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants, or other equity compensation awards and the terms thereof to be received by the recipients, provided that an officer may not use such authority to designate himself or herself or any other persons the board of directors may specify as a recipient of such rights, options, warrants, or other equity compensation awards.

293-A:6.25 Form and Content of Certificates.

(a) Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) the name of the issuing corporation and that it is organized under the law of this state;

(2) the name of the person to whom issued; and

(3) the number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate (1) must be signed (either manually or in facsimile) by 2 officers designated in the bylaws or by the board of directors and (2) may bear the corporate seal or its facsimile.

(e) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

1 293-A:6.26 Shares Without Certificates.

2 (a) Unless the articles of incorporation or bylaws provide otherwise, the board of
3 directors of a corporation may authorize the issue of some or all of the shares of any or all of its
4 classes or series without certificates. The authorization does not affect shares already represented
5 by certificates until they are surrendered to the corporation.

6 (b) Within a reasonable time after the issue or transfer of shares without certificates, the
7 corporation shall send the shareholder a written statement of the information required on
8 certificates by RSA 293-A:6.25(b) and (c), and, if applicable, RSA 293-A:6.27.

9 293-A:6.27 Restriction on Transfer of Shares and Other Securities.

10 (a) The articles of incorporation, bylaws, an agreement among shareholders, or an
11 agreement between shareholders and the corporation may impose restrictions on the transfer or
12 registration of transfer of shares of the corporation. A restriction does not affect shares issued before
13 the restriction was adopted unless the holders of the shares are parties to the restriction agreement
14 or voted in favor of the restriction.

15 (b) A restriction on the transfer or registration of transfer of shares is valid and
16 enforceable against the holder or a transferee of the holder if the restriction is authorized by this
17 section and its existence is noted conspicuously on the front or back of the certificate or is contained
18 in the information statement required by RSA 293-A:6.26(b). Unless so noted or contained, a
19 restriction is not enforceable against a person without knowledge of the restriction.

20 (c) A restriction on the transfer or registration of transfer of shares is authorized:

21 (1) to maintain the corporation's status when it is dependent on the number or
22 identity of its shareholders;

23 (2) to preserve exemptions under federal or state securities law;

24 (3) for any other reasonable purpose.

25 (d) A restriction on the transfer or registration of transfer of shares may:

26 (1) obligate the shareholder first to offer the corporation or other persons (separately,
27 consecutively, or simultaneously) an opportunity to acquire the restricted shares;

28 (2) obligate the corporation or other persons (separately, consecutively, or
29 simultaneously) to acquire the restricted shares;

30 (3) require the corporation, the holders of any class of its shares, or another person to
31 approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;

32 (4) prohibit the transfer of the restricted shares to designated persons or classes of
33 persons, if the prohibition is not manifestly unreasonable.

34 (e) For purposes of this section, "shares" includes a security convertible into or carrying a
35 right to subscribe for or acquire shares.

36 293-A:6.28 Expense of Issue. A corporation may pay the expenses of selling or underwriting its
37 shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

Part C

Subsequent Acquisition of Shares by
Shareholders and Corporation

293-A:6.30 Shareholders' Preemptive Rights.

(a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares unless the articles of incorporation contain a statement that "the corporation elects to have preemptive rights," or words of similar import.

(b) A corporation electing to have preemptive rights may include in its articles of incorporation a statement prescribing the type and extent of preemptive rights granted to the shareholders. The statement may include, modify, or exclude any of the terms provided under subdivisions (1) through (6) of RSA 293-A:6.30(b). If the articles of incorporation of a corporation electing to have preemptive rights do not include a statement prescribing the preemptive rights, the following terms shall apply:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(2) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) There is no preemptive right with respect to:

(i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(iii) shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation;

(iv) shares sold otherwise than for money.

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive

rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

293-A:6.31 Corporation's Acquisition of Its Own Shares.

(a) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

Part D

Distributions

293-A:6.40 Distributions to Shareholders.

(a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in RSA 293-A:6.40(c).

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's shares), it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) the corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under RSA 293-A:6.40(c) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in RSA 293-A:6.40(g), the effect of a distribution under RSA 293-A:6.40(c) is measured:

(1) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) in all other cases, as of (i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or (ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(h) This section shall not apply to distributions in liquidation under RSA 293-A:14.01 through RSA 293-A:14.34.

Shareholders

Part A

Meetings

293-A:7.01 Annual Meeting.

(a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by RSA 293-A:7.04, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws; provided, however, that if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to RSA 293-A:7.28, directors may not be elected by less than unanimous consent.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

293-A:7.02 Special Meeting.

(a) A corporation shall hold a special meeting of shareholders:

(1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) if the holders of at least 10 percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25 percent of all the votes entitled to be cast on any issue proposed to be considered.

1 Unless otherwise provided in the articles of incorporation, a written demand for a special meeting
2 may be revoked by a writing to that effect received by the corporation prior to the receipt by the
3 corporation of demands sufficient in number to require the holding of a special meeting.

4 (b) If not otherwise fixed under RSA 293-A:7.03 or RSA 293-A:7.07 the record date for
5 determining shareholders entitled to demand a special meeting is the date the first shareholder signs
6 the demand.

7 (c) Special shareholders' meetings may be held in or out of this state at the place stated
8 in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the
9 bylaws, special meetings shall be held at the corporation's principal office.

10 (d) Only business within the purpose or purposes described in the meeting notice
11 required by RSA 293-A:7.05(c), may be conducted at a special shareholders' meeting.

12 **293-A:7.03 Court-Ordered Meeting.**

13 (a) The superior court of the county where a corporation's principal office (or, if none in
14 this state, its registered office) is located may summarily order a meeting to be held:

15 (1) on application of any shareholder of the corporation entitled to participate in an
16 annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not
17 become effective within the earlier of 6 months after the end of the corporation's fiscal year or 15
18 months after its last annual meeting; or

19 (2) on application of a shareholder who signed a demand for a special meeting valid
20 under RSA 293-A:7.02, if:

21 (i) notice of the special meeting was not given within 30 days after the date the
22 demand was delivered to the corporation's secretary; or

23 (ii) the special meeting was not held in accordance with the notice.

24 (b) The court may fix the time and place of the meeting, determine the shares entitled to
25 participate in the meeting, specify a record date or dates for determining shareholders entitled to
26 notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the
27 quorum required for specific matters to be considered at the meeting (or direct that the votes
28 represented at the meeting constitute a quorum for action on those matters), and enter other orders
29 necessary to accomplish the purpose or purposes of the meeting.

30 **293-A:7.04 Action Without Meeting.**

31 (a) Action required or permitted by this chapter to be taken at a shareholders' meeting
32 may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the
33 action. The action must be evidenced by one or more written consents bearing the date of signature
34 and describing the action taken, signed by all the shareholders entitled to vote on the action and
35 delivered to the corporation for inclusion in the minutes or filing with the corporate records.

36 (b) The articles of incorporation may provide that any action required or permitted by
37 this chapter to be taken at a shareholders' meeting may be taken without a meeting, and without

1 prior notice, if consents in writing setting forth the action so taken are signed by the holders of
2 outstanding shares having not less than the minimum number of votes that would be required to
3 authorize or take the action at a meeting at which all shares entitled to vote on the action were
4 present and voted. The written consent shall bear the date of signature of the shareholder who signs
5 the consent and be delivered to the corporation for inclusion in the minutes or filing with the
6 corporate records.

7 (c) If not otherwise fixed under RSA 293-A:7.07 and if prior board action is not required
8 respecting the action to be taken without a meeting, the record date for determining the
9 shareholders entitled to take action without a meeting shall be the first date on which a signed
10 written consent is delivered to the corporation. If not otherwise fixed under RSA 293-A:7.07 and if
11 prior board action is required respecting the action to be taken without a meeting, the record date
12 shall be the close of business on the day the resolution of the board taking such prior action is
13 adopted. No written consent shall be effective to take the corporate action referred to therein unless,
14 within 60 days of the earliest date on which a consent delivered to the corporation as required by this
15 section was signed, written consents signed by sufficient shareholders to take the action have been
16 delivered to the corporation. A written consent may be revoked by a writing to that effect delivered
17 to the corporation before unrevoked written consents sufficient in number to take the corporate
18 action are delivered to the corporation.

19 (d) A consent signed pursuant to the provisions of this section has the effect of a vote
20 taken at a meeting and may be described as such in any document. Unless the articles of
21 incorporation, bylaws or a resolution of the board of directors provides for a reasonable delay to
22 permit tabulation of written consents, the action taken by written consent shall be effective when
23 written consents signed by sufficient shareholders to take the action are delivered to the corporation.

24 (e) If this chapter requires that notice of a proposed action be given to nonvoting
25 shareholders and the action is to be taken by written consent of the voting shareholders, the
26 corporation must give its nonvoting shareholders written notice of the action not more than 10 days
27 after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii)
28 such later date that tabulation of consents is completed pursuant to an authorization under
29 subsection (d). The notice must reasonably describe the action taken and contain or be accompanied
30 by the same material that, under any provision of this chapter, would have been required to be sent
31 to nonvoting shareholders in a notice of a meeting at which the proposed action would have been
32 submitted to the shareholders for action.

33 (f) If action is taken by less than unanimous written consent of the voting shareholders,
34 the corporation must give its nonconsenting voting shareholders written notice of the action
35 promptly after (i) written consents sufficient to take the action have been delivered to the
36 corporation, or (ii) such later date that tabulation of consents is completed pursuant to an
37 authorization under subsection (d). The notice must reasonably describe the action taken and

1 contain or be accompanied by the same material that, under any provision of this chapter, would
2 have been required to be sent to voting shareholders in a notice of a meeting at which the action
3 would have been submitted to the shareholders for action.

4 (g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of
5 actions taken by written consent, and a failure to comply with such notice requirements shall not
6 invalidate actions taken by written consent, provided that this subsection shall not be deemed to
7 limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by
8 a failure to give such notice within the required time period.

9 293-A:7.05 Notice of Meeting.

10 (a) A corporation shall notify shareholders of the date, time, and place of each annual
11 and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date.
12 The notice shall include the record date for determining the shareholders entitled to vote at the
13 meeting, if such date is different than the record date for determining shareholders entitled to notice
14 of the meeting. If the board of directors has authorized participation by means of remote
15 communication pursuant to RSA 293-A:7.09 for any class or series of shareholders, the notice to such
16 class or series of shareholders shall describe the means of remote communication to be used. Unless
17 this chapter or the articles of incorporation require otherwise, the corporation is required to give
18 notice only to shareholders entitled to vote at the meeting as of the record date for determining the
19 shareholders entitled to notice of the meeting.

20 (b) Unless this chapter or the articles of incorporation require otherwise, notice of an annual
21 meeting need not include a description of the purpose or purposes for which the meeting is called.

22 (c) Notice of a special meeting must include a description of the purpose or purposes for
23 which the meeting is called.

24 (d) If not otherwise fixed under RSA 293-A:7.03 or RSA 293-A:7.07 the record date for
25 determining shareholders entitled to notice of and to vote at an annual or special shareholders'
26 meeting is the day before the first notice is delivered to shareholders.

27 (e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is
28 adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if
29 the new date, time, or place is announced at the meeting before adjournment. If a new record date
30 for the adjourned meeting is or must be fixed under RSA 293-A:7.07 however, notice of the adjourned
31 meeting must be given under this section to shareholders entitled to vote at such adjourned meeting
32 as of the record date fixed for notice of such adjourned meeting.

33 293-A:7.06 Waiver of Notice.

34 (a) A shareholder may waive any notice required by this chapter, the articles of
35 incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in
36 writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for
37 inclusion in the minutes or filing with the corporate records.

1 (b) A shareholder's attendance at a meeting:

2 (1) waives objection to lack of notice or defective notice of the meeting, unless the
3 shareholder at the beginning of the meeting objects to holding the meeting or transacting business at
4 the meeting;

5 (2) waives objection to consideration of a particular matter at the meeting that is not
6 within the purpose or purposes described in the meeting notice, unless the shareholder objects to
7 considering the matter when it is presented.

8 293-A:7.07 Record Date.

9 (a) The bylaws may fix or provide the manner of fixing the record date or dates for one or
10 more voting groups in order to determine the shareholders entitled to notice of a shareholders'
11 meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or
12 provide for fixing a record date, the board of directors of the corporation may fix a future date as the
13 record date.

14 (b) A record date fixed under this section may not be more than 70 days before the
15 meeting or action requiring a determination of shareholders.

16 (c) A determination of shareholders entitled to notice of or to vote at a shareholders'
17 meeting is effective for any adjournment of the meeting unless the board of directors fixes a new
18 record date or dates, which it must do if the meeting is adjourned to a date more than 120 days after
19 the date fixed for the original meeting.

20 (d) If a court orders a meeting adjourned to a date more than 120 days after the date
21 fixed for the original meeting, it may provide that the original record date or dates continue in effect
22 or it may fix a new record date or dates.

23 (e) The record date for a shareholders' meeting fixed by or in the manner provided in the
24 bylaws or by the board of directors shall be the record date for determining shareholders entitled
25 both to notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed by
26 the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes
27 the record date for shareholders entitled to notice of the meeting, fixes a later record date on or
28 before the date of the meeting to determine the shareholders entitled to vote at the meeting.

29 293-A:7.08 Conduct of the Meeting.

30 (a) At each meeting of shareholders, a chair shall preside. The chair shall be appointed
31 as provided in the bylaws or, in the absence of such provision, by the board.

32 (b) The chair, unless the articles of incorporation or bylaws provide otherwise, shall
33 determine the order of business and shall have the authority to establish rules for the conduct of the
34 meeting.

35 (c) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

36 (d) The chair of the meeting shall announce at the meeting when the polls close for each
37 matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the

1 final adjournment of the meeting. After the polls close, no ballots, proxies, or votes nor any
2 revocations or changes thereto may be accepted.

3 293-A:7.09 Remote Participation in Annual and Special Meetings.

4 (a) Shareholders of any class or series may participate in any meeting of shareholders by
5 means of remote communication to the extent the board of directors authorizes such participation for
6 such class or series. Participation by means of remote communication shall be subject to such
7 guidelines and procedures as the board of directors adopts, and shall be in conformity with
8 subsection (b).

9 (b) Shareholders participating in a shareholders' meeting by means of remote
10 communication shall be deemed present and may vote at such a meeting if the corporation has
11 implemented reasonable measures:

12 (1) to verify that each person participating remotely is a shareholder, and

13 (2) to provide such shareholders a reasonable opportunity to participate in the
14 meeting and to vote on matters submitted to the shareholders, including an opportunity to
15 communicate, and to read or hear the proceedings of the meeting, substantially concurrently with
16 such proceedings.

17 Part B

18 Voting

19 293-A:7.20 Shareholders' List for Meeting.

20 (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical
21 list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the
22 board of directors fixes a different record date under RSA 293-A:7.07(e) to determine the
23 shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of
24 the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by
25 voting group (and within each voting group by class or series of shares) and show the address of and
26 number of shares held by each shareholder.

27 (b) The shareholders' list for notice must be available for inspection by any shareholder,
28 beginning 2 business days after notice of the meeting is given for which the list was prepared and
29 continuing through the meeting, at the corporation's principal office or at a place identified in the
30 meeting notice in the city where the meeting will be held. A shareholders' list for voting must be
31 similarly available for inspection promptly after the record date for voting. A shareholder, or the
32 shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the
33 requirements of RSA 293-A:16.02(d) to copy a list, during regular business hours and at the
34 shareholder's expense, during the period it is available for inspection.

35 (c) The corporation shall make the list of shareholders entitled to vote available at the
36 meeting, and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the list at
37 any time during the meeting or any adjournment.

1 (d) If the corporation refuses to allow a shareholder, or the shareholder's agent or
2 attorney. to inspect a shareholders' list before or at the meeting (or copy a list as permitted by
3 subsection (b)), the superior court of the county where a corporation's principal office (or, if none in
4 this state, its registered office) is located, on application of the shareholder, may summarily order the
5 inspection or copying at the corporation's expense and may postpone the meeting for which the list
6 was prepared until the inspection or copying is complete.

7 (e) Refusal or failure to prepare or make available a shareholders' list does not affect the
8 validity of action taken at the meeting.

9 293-A:7.21 Voting Entitlement of Shares.

10 (a) Except as provided in subsections (b) and (d) or unless the articles of incorporation
11 provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter
12 voted on at a shareholders' meeting. Only shares are entitled to vote.

13 (b) Absent special circumstances, the shares of a corporation are not entitled to vote if
14 they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first
15 corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the
16 second corporation.

17 (c) Subsection (b) does not limit the power of a corporation to vote any shares, including
18 its own shares, held by it in a fiduciary capacity.

19 (d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the
20 holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or
21 other financial institution under an irrevocable obligation to pay the holders the redemption price on
22 surrender of the shares.

23 293-A:7.22 Proxies.

24 (a) A shareholder may vote the shareholder's shares in person or by proxy.

25 (b) A shareholder, or the shareholder's agent or attorney-in-fact, may appoint a proxy to
26 vote or otherwise act for the shareholder by signing an appointment form, or by an electronic
27 transmission. An electronic transmission must contain or be accompanied by information from
28 which the recipient can determine the date of the transmission, and that the transmission was
29 authorized by the sender or the sender's agent or attorney-in-fact.

30 (c) An appointment of a proxy is effective when a signed appointment form or an
31 electronic transmission of the appointment is received by the inspector of election or the officer or
32 agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless
33 a longer period is expressly provided in the appointment form.

34 (d) An appointment of a proxy is revocable unless the appointment form or electronic
35 transmission states that it is irrevocable and the appointment is coupled with an interest.
36 Appointments coupled with an interest include the appointment of:

37 (1) a pledgee;

38 (2) a person who purchased or agreed to purchase the shares;

1 (3) a creditor of the corporation who extended it credit under terms requiring the
2 appointment;

3 (4) an employee of the corporation whose employment contract requires the
4 appointment; or

5 (5) a party to a voting agreement created under RSA 293-A:7.31.

6 (e) The death or incapacity of the shareholder appointing a proxy does not affect the
7 right of the corporation to accept the proxy's authority unless notice of the death or incapacity is
8 received by the secretary or other officer or agent authorized to tabulate votes before the proxy
9 exercises authority under the appointment.

10 (f) An appointment made irrevocable under subsection (d) is revoked when the interest
11 with which it is coupled is extinguished.

12 (g) A transferee for value of shares subject to an irrevocable appointment may revoke the
13 appointment if the transferee did not know of its existence when acquiring the shares and the
14 existence of the irrevocable appointment was not noted conspicuously on the certificate representing
15 the shares or on the information statement for shares without certificates.

16 (h) Subject to RSA 293-A:7.24 and to any express limitation on the proxy's authority
17 stated in the appointment form or electronic transmission, a corporation is entitled to accept the
18 proxy's vote or other action as that of the shareholder making the appointment.

19 293-A:7.23 Shares Held by Nominees.

20 (a) A corporation may establish a procedure by which the beneficial owner of shares that
21 are registered in the name of a nominee is recognized by the corporation as the shareholder. The
22 extent of this recognition may be determined in the procedure.

23 (b) The procedure may set forth:

- 24 (1) the types of nominees to which it applies;
25 (2) the rights or privileges that the corporation recognizes in a beneficial owner;
26 (3) the manner in which the procedure is selected by the nominee;
27 (4) the information that must be provided when the procedure is selected;
28 (5) the period for which selection of the procedure is effective; and
29 (6) other aspects of the rights and duties created.

30 293-A:7.24 Corporation's Acceptance of Votes.

31 (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to
32 the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote,
33 consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

34 (b) If the name signed on a vote, consent, waiver, or proxy appointment does not
35 correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless
36 entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the
37 shareholder if:

1 (1) the shareholder is an entity and the name signed purports to be that of an officer
2 or agent of the entity;

3 (2) the name signed purports to be that of an administrator, executor, guardian, or
4 conservator representing the shareholder and, if the corporation requests, evidence of fiduciary
5 status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or
6 proxy appointment;

7 (3) the name signed purports to be that of a receiver or trustee in bankruptcy of the
8 shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has
9 been presented with respect to the vote, consent, waiver, or proxy appointment;

10 (4) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-
11 fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the
12 signatory's authority to sign for the shareholder has been presented with respect to the vote, consent,
13 waiver, or proxy appointment;

14 (5) two or more persons are the shareholder as co-tenants or fiduciaries and the
15 name signed purports to be the name of at least one of the co-owners and the person signing appears
16 to be acting on behalf of all the co-owners.

17 (c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if
18 the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has
19 reasonable basis for doubt about the validity of the signature on it or about the signatory's authority
20 to sign for the shareholder.

21 (d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or
22 proxy appointment in good faith and in accordance with the standards of this section or RSA 293-
23 A:7.22(b) are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

24 (e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or
25 proxy appointment under this section is valid unless a court of competent jurisdiction determines
26 otherwise.

27 293-A:7.25 Quorum and Voting Requirements for Voting Groups.

28 (a) Shares entitled to vote as a separate voting group may take action on a matter at a
29 meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of
30 incorporation provides otherwise, a majority of the votes entitled to be cast on the matter by the
31 voting group constitutes a quorum of that voting group for action on that matter.

32 (b) Once a share is represented for any purpose at a meeting, it is deemed present for
33 quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a
34 new record date is or must be set for that adjourned meeting.

35 (c) If a quorum exists, action on a matter (other than the election of directors) by a voting
36 group is approved if the votes cast within the voting group favoring the action exceed the votes cast
37 opposing the action, unless the articles of incorporation require a greater number of affirmative votes.

1 (d) An amendment of articles of incorporation adding, changing, or deleting a quorum or
2 voting requirement for a voting group greater than specified in subsection (a) or (c) is governed by
3 RSA 293-A:7.27.

4 (e) The election of directors is governed by RSA 293-A:7.28.
5 293-A:7.26 Action by Single and Multiple Voting Groups.

6 (a) If the articles of incorporation or this chapter provide for voting by a single voting
7 group on a matter, action on that matter is taken when voted upon by that voting group as provided
8 in RSA 293-A:7.25.

9 (b) If the articles of incorporation or this chapter provide for voting by 2 or more voting
10 groups on a matter, action on that matter is taken only when voted upon by each of those voting
11 groups counted separately as provided in RSA 293-A:7.25. Action may be taken by one voting group
12 on a matter even though no action is taken by another voting group entitled to vote on the matter.

13 293-A:7.27 Greater Quorum or Voting Requirements.

14 (a) The articles of incorporation may provide for a greater quorum or voting requirement
15 for shareholders (or voting groups of shareholders) than is provided for by this chapter.

16 (b) An amendment to the articles of incorporation that adds, changes, or deletes a
17 greater quorum or voting requirement must meet the same quorum requirement and be adopted by
18 the same vote and voting groups required to take action under the quorum and voting requirements
19 then in effect or proposed to be adopted, whichever is greater.

20 293-A:7.28 Voting for Directors; Cumulative Voting.

21 (a) Unless otherwise provided in the articles of incorporation, directors are elected by a
22 plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a
23 quorum is present.

24 (b) Shareholders do not have a right to cumulate their votes for directors unless the
25 articles of incorporation so provide.

26 (c) A statement included in the articles of incorporation that “all or a designated voting
27 group of shareholders are entitled to cumulate their votes for directors” (or words of similar import)
28 means that the shareholders designated are entitled to multiply the number of votes they are
29 entitled to cast by the number of directors for whom they are entitled to vote and cast the product for
30 a single candidate or distribute the product among 2 or more candidates.

31 (d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a
32 particular meeting unless:

33 (1) the meeting notice or proxy statement accompanying the notice states
34 conspicuously that cumulative voting is authorized; or

35 (2) a shareholder who has the right to cumulate his votes gives notice to the
36 corporation not less than 48 hours before the time set for the meeting of the shareholder’s intent to

1 cumulate votes during the meeting, and if one shareholder gives this notice all other shareholders in
2 the same voting group participating in the election are entitled to cumulate their votes without
3 giving further notice.

4 Part C

5 Voting Trusts and Agreements

6 293-A:7.30 Voting Trusts.

7 (a) One or more shareholders may create a voting trust, conferring on a trustee the right
8 to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust
9 (which may include anything consistent with its purpose) and transferring their shares to the
10 trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and
11 addresses of all owners of beneficial interests in the trust, together with the number and class of
12 shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's
13 principal office.

14 (b) A voting trust becomes effective on the date the first shares subject to the trust are
15 registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective
16 date unless extended under subsection (c).

17 (c) All or some of the parties to a voting trust may extend it for additional terms of not
18 more than 10 years each by signing an extension agreement and obtaining the voting trustee's
19 written consent to the extension. An extension is valid for 10 years from the date the first
20 shareholder signs the extension agreement. The voting trustee must deliver copies of the extension
21 agreement and list of beneficial owners to the corporation's principal office. An extension agreement
22 binds only those parties signing it.

23 293-A:7.31 Voting Agreements.

24 (a) Two or more shareholders may provide for the manner in which they will vote their
25 shares by signing an agreement for that purpose. A voting agreement created under this section is
26 not subject to the provisions of RSA 293-A:7.30.

27 (b) A voting agreement created under this section is specifically enforceable.

28 293-A:7.32 Shareholder Agreements.

29 (a) An agreement among the shareholders of a corporation that complies with this
30 section is effective among the shareholders and the corporation even though it is inconsistent with
31 one or more other provisions of this chapter in that it:

32 (1) eliminates the board of directors or restricts the discretion or powers of the board
33 of directors;

34 (2) governs the authorization or making of distributions whether or not in proportion
35 to ownership of shares, subject to the limitations in RSA 293-A:6.40.

36 (3) establishes who shall be directors or officers of the corporation, or their terms of
37 office or manner of selection or removal;

1 (4) governs, in general or in regard to specific matters, the exercise or division of
2 voting power by or between the shareholders and directors or by or among any of them, including use
3 of weighted voting rights or director proxies;

4 (5) establishes the terms and conditions of any agreement for the transfer or use of
5 property or the provision of services between the corporation and any shareholder, director, officer or
6 employee of the corporation or among any of them;

7 (6) transfers to one or more shareholders or other persons all or part of the authority
8 to exercise the corporate powers or to manage the business and affairs of the corporation, including
9 the resolution of any issue about which there exists a deadlock among directors or shareholders;

10 (7) requires dissolution of the corporation at the request of one or more of the
11 shareholders or upon the occurrence of a specified event or contingency; or

12 (8) otherwise governs the exercise of the corporate powers or the management of the
13 business and affairs of the corporation or the relationship among the shareholders, the directors, and
14 the corporation, or among any of them, and is not contrary to public policy.

15 (b) An agreement authorized by this section shall be:

16 (1) as set forth (A) in the articles of incorporation or bylaws and approved by all persons
17 who are shareholders at the time of the agreement or (B) in a written agreement that is signed by all
18 persons who are shareholders at the time of the agreement and is made known to the corporation;

19 (2) subject to amendment only by all persons who are shareholders at the time of the
20 amendment, unless the agreement provides otherwise; and

21 (3) valid for 10 years, unless the agreement provides otherwise.

22 (c) The existence of an agreement authorized by this section shall be noted conspicuously
23 on the front or back of each certificate for outstanding shares or on the information statement as
24 required by RSA 293-A:6.26(b). If at the time of the agreement the corporation has shares
25 outstanding represented by certificates, the corporation shall recall the outstanding certificates and
26 issue substitute certificates that comply with this subsection. The failure to note the existence of the
27 agreement on the certificate or information statement shall not affect the validity of the agreement
28 or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not
29 have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A
30 purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is
31 noted on the certificate or information statement for the shares in compliance with this subsection
32 and, if the shares are not represented by a certificate, the information statement is delivered to the
33 purchaser at or prior to the time of purchase of the shares. An action to enforce the right of
34 rescission authorized by this subsection must be commenced within the earlier of 90 days after
35 discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

36 (d) An agreement authorized by this section shall cease to be effective when the
37 corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the

board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

Part D
Derivative Proceedings

293-A:7.40 Definitions.

(a) In this subdivision:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in RSA 293-A:7.47 in the right of a foreign corporation.

(2) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

293-A:7.41 Standing.

(a) A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

293-A:7.42 Demand.

(a) No shareholder may commence a derivative proceeding until:

(1) a written demand has been made upon the corporation to take suitable action; and

(2) Ninety days have expired from the date delivery of the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90 day period.

1 293-A:7.43 Stay of Proceedings. If the corporation commences an inquiry into the allegations
2 made in the demand or complaint, the court may stay any derivative proceeding for such period as
3 the court deems appropriate.

4 293-A:7.44 Dismissal.

5 (a) A derivative proceeding shall be dismissed by the court on motion by the corporation
6 if one of the groups specified in RSA 293-A:7.44(b) or RSA 293-A:7.44(e) has determined in good
7 faith, after conducting a reasonable inquiry upon which its conclusions are based, that the
8 maintenance of the derivative proceeding is not in the best interests of the corporation.

9 (b) Unless a panel is appointed pursuant to RSA 293-A:7.44(e), the determination in
10 RSA 293-A:7.44(a) shall be made by:

11 (1) a majority vote of qualified directors present at a meeting of the board of directors
12 if the qualified directors constitute a quorum; or

13 (2) a majority vote of a committee consisting of 2 or more qualified directors
14 appointed by majority vote of qualified directors present at a meeting of the board of directors,
15 regardless of whether such qualified directors constitute a quorum.

16 (c) If a derivative proceeding is commenced after a determination has been made
17 rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing
18 either (1) that a majority of the board of directors did not consist of qualified directors at the time the
19 determination was made or (2) that the requirements of subsection (a) have not been met.

20 (d) If a majority of the board of directors consisted of qualified directors at the time the
21 determination was made, the plaintiff shall have the burden of proving that the requirements of
22 subsection (a) have not been met; if not, the corporation shall have the burden of proving that the
23 requirements of subsection (a) have been met.

24 (e) Upon motion by the corporation, the court may appoint a panel of one or more
25 individuals to make a determination whether the maintenance of the derivative proceeding is in the
26 best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the
27 requirements of subsection (a) have not been met.

28 293-A:7.45 Discontinuance or Settlement. A derivative proceeding may not be discontinued or
29 settled without the court's approval. If the court determines that a proposed discontinuance or
30 settlement will substantially affect the interests of the corporation's shareholders or a class of
31 shareholders, the court shall direct that notice be given to the shareholders affected.

32 293-A:7.46 Payment of Expenses.

33 (a) On termination of the derivative proceeding the court may:

34 (1) order the corporation to pay the plaintiff's expenses, including counsel fees, incurred
35 in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

36 (2) order the plaintiff to pay any defendant's expenses, including counsel fees,
37 incurred in defending the proceeding if it finds that the proceeding was commenced or maintained
38 without reasonable cause or for an improper purpose; or

1 (3) order a party to pay an opposing party's expenses, including counsel fees,
2 incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading,
3 motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by
4 existing law or a good faith argument for the extension, modification or reversal of existing law and
5 was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless
6 increase in the cost of litigation.

7 293-A:7.47 Applicability to Foreign Corporations. In any derivative proceeding in the right of a
8 foreign corporation, the matters covered by this subdivision shall be governed by the laws of the
9 jurisdiction of incorporation of the foreign corporation except for RSA 293-A:7.43, RSA 293-A:7.45,
10 and RSA 293-A:7.46.

11 293-A:7.48 Shareholder Action to Appoint Custodian or Receiver.

12 (a) The superior court of the county where a corporation's principal office (or, if none in
13 this state, its registered office) is located may appoint one or more persons to be custodians, or, if the
14 corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder
15 where it is established that:

16 (1) the directors are deadlocked in the management of the corporate affairs, the
17 shareholders are unable to break the deadlock, and irreparable injury to the corporation is
18 threatened or being suffered; or

19 (2) the directors or those in control of the corporation are acting fraudulently and
20 irreparable injury to the corporation is threatened or being suffered.

21 (b) The court:

22 (1) may issue injunctions, appoint a temporary custodian or temporary receiver with
23 all the powers and duties the court directs, take other action to preserve the corporate assets
24 wherever located, and carry on the business of the corporation until a full hearing is held;

25 (2) shall hold a full hearing, after notifying all parties to the proceeding and any
26 interested persons designated by the court, before appointing a custodian or receiver; and

27 (3) has jurisdiction over the corporation and all of its property, wherever located.

28 (c) The court may appoint an individual or domestic or foreign corporation (authorized to
29 transact business in this state) as a custodian or receiver and may require the custodian or receiver
30 to post bond, with or without sureties, in an amount the court directs.

31 (d) The court shall describe the powers and duties of the custodian or receiver in its
32 appointing order, which may be amended from time to time. Among other powers:

33 (1) a custodian may exercise all of the powers of the corporation, through or in place
34 of its board of directors, to the extent necessary to manage the business and affairs of the
35 corporation; and

36 (2) a receiver (i) may dispose of all or any part of the assets of the corporation
37 wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend
38 in the receiver's own name as receiver in all courts of this state.

1 (e) The court during a custodianship may redesignate the custodian a receiver, and
2 during a receivership, may redesignate the receiver a custodian if doing so is in the best interests of
3 the corporation.

4 (f) The court from time to time during the custodianship or receivership may order
5 compensation paid and expense disbursements or reimbursements made to the custodian or receiver
6 from the assets of the corporation or proceeds from the sale of its assets.

7 Directors and Officers

8 Part A

9 Board of Directors

10 293-A:8.01 Requirement for and Functions of Board of Directors.

11 (a) Except as provided in RSA 293-A:7.32, each corporation must have a board of
12 directors.

13 (b) All corporate powers shall be exercised by or under the authority of the board of
14 directors of the corporation, and the business and affairs of the corporation shall be managed by or
15 under the direction, and subject to the oversight, of its board of directors, subject to any limitation
16 set forth in the articles of incorporation or in an agreement authorized under RSA 293-A:7.32.

17 293-A:8.02 Qualifications of Directors. The articles of incorporation or bylaws may prescribe
18 qualifications for directors. A director need not be a resident of this state or a shareholder of the
19 corporation unless the articles of incorporation or bylaws so prescribe.

20 293-A:8.03 Number and Election of Directors.

21 (a) A board of directors must consist of one or more individuals, with the number
22 specified in or fixed in accordance with the articles of incorporation or bylaws.

23 (b) The number of directors may be increased or decreased from time to time by
24 amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

25 (c) Directors are elected at the first annual shareholders' meeting and at each annual
26 meeting thereafter unless their terms are staggered under RSA 293-A:8.06.

27 293-A:8.04 Election of Directors by Certain Classes of Shareholders. If the articles of
28 incorporation authorize dividing the shares into classes, the articles may also authorize the election
29 of all or a specified number of directors by the holders of one or more authorized classes of shares. A
30 class (or classes) of shares entitled to elect one or more directors is a separate voting group for
31 purposes of the election of directors.

32 293-A:8.05 Terms of Directors Generally.

33 (a) The terms of the initial directors of a corporation expire at the first shareholders'
34 meeting at which directors are elected.

35 (b) The terms of all other directors expire at the next, or if their terms are staggered in
36 accordance with RSA 293-A:8.06, at the applicable second or third, annual shareholders' meeting
37 following their election, except to the extent (i) provided in RSA 293-A:10.22 if a bylaw electing to be

governed by that section is in effect; or (ii) a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Except to the extent otherwise provided in the articles of incorporation or under RSA 293-A:10.22, if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or there is a decrease in the number of directors.

293-A:8.06 Staggered Terms for Directors. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into 2 or 3 groups, with each group containing 1/2 or 1/3 of the total, as near as may be practicable. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

293-A:8.07 Resignation of Directors.

(a) A director may resign at any time by delivering a written resignation to the board of directors, or its chair, or to the secretary of the corporation.

(b) A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

293-A:8.08 Removal of Directors by Shareholders.

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove exceeds the number of votes cast not to remove the director.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

293-A:8.09 Removal of Directors by Judicial Proceeding.

1 (a) The superior court of the county where a corporation's principal office (or, if none in
2 this state, its registered office) is located may remove a director of the corporation from office in a
3 proceeding commenced by or in the right of the corporation if the court finds that: (1) the director
4 engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the
5 position of director, or intentionally inflicted harm on the corporation; and (2) considering the
6 director's course of conduct and the inadequacy of other available remedies, removal would be in the
7 best interest of the corporation.

8 (b) A shareholder proceeding on behalf of the corporation under subsection (a) shall comply
9 with all of the requirements of RSA 293-A:7.40 through RSA 293-A:7.47, except RSA 293-A:7.41(1).

10 (c) The court, in addition to removing the director, may bar the director from reelection
11 for a period prescribed by the court.

12 (d) Nothing in this section limits the equitable powers of the court to order other relief.
13 293-A:8.10 Vacancy on Board.

14 (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board
15 of directors, including a vacancy resulting from an increase in the number of directors:

- 16 (1) the shareholders may fill the vacancy;
17 (2) the board of directors may fill the vacancy; or
18 (3) if the directors remaining in office constitute fewer than a quorum of the board,
19 they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

20 (b) If the vacant office was held by a director elected by a voting group of shareholders,
21 only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by
22 the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if
23 it is filled by the directors.

24 (c) A vacancy that will occur at a specific later date (by reason of a resignation effective
25 at a later date under RSA 293-A:8.07(b) or otherwise) may be filled before the vacancy occurs but the
26 new director may not take office until the vacancy occurs.

27 293-A:8.11 Compensation of Directors. Unless the articles of incorporation or bylaws provide
28 otherwise, the board of directors may fix the compensation of directors.

29 Part B

30 Meetings And Action Of The Board

31 293-A:8.20 Meetings.

32 (a) The board of directors may hold regular or special meetings in or out of this state.

33 (b) Unless the articles of incorporation or bylaws provide otherwise, the board of
34 directors may permit any or all directors to participate in a regular or special meeting by, or conduct
35 the meeting through the use of, any means of communication by which all directors participating
36 may simultaneously hear each other during the meeting. A director participating in a meeting by
37 this means is deemed to be present in person at the meeting.

1 293-A:8.21 Action Without Meeting.

2 (a) Unless the articles of incorporation or bylaws provide otherwise, action required or
3 permitted by this chapter to be taken at a board of directors' meeting may be taken without a
4 meeting if the action is taken by unanimous consent of all members of the board. The action must be
5 evidenced by one or more written consents describing the action taken, signed by each director, and
6 included in the minutes or filed with the corporate records reflecting the action taken.

7 (b) Action taken under this section is effective when the last director signs the consent,
8 unless the consent specifies a different effective date.

9 (c) A consent signed under this section has the effect of a meeting vote and may be
10 described as such in any document.

11 293-A:8.22 Notice of Meeting.

12 (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of
13 the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

14 (b) Unless the articles of incorporation or bylaws provide for a longer or shorter period,
15 special meetings of the board of directors must be preceded by at least 2 days' notice of the date,
16 time, and place of the meeting. The notice need not describe the purpose of the special meeting
17 unless required by the articles of incorporation or bylaws.

18 293-A:8.23 Waiver of Notice.

19 (a) A director may waive any notice required by this chapter, the articles of
20 incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by
21 subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed
22 with the minutes or corporate records.

23 (b) A director's attendance at or participation in a meeting waives any required notice to
24 the director of the meeting unless the director at the beginning of the meeting (or promptly upon
25 arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter
26 vote for or assent to action taken at the meeting.

27 293-A:8.24 Quorum and Voting.

28 (a) Unless the articles of incorporation or bylaws require a greater number or unless
29 otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

30 (1) a majority of the fixed number of directors if the corporation has a fixed board
31 size; or

32 (2) a majority of the number of directors prescribed or, if no number is prescribed,
33 the number in office immediately before the meeting begins if the corporation has a variable-range
34 size board.

35 (b) The articles of incorporation or bylaws may authorize a quorum of a board of
36 directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined
37 under subsection (a).

1 (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of
2 directors present is the act of the board of directors unless the articles of incorporation or bylaws
3 require the vote of a greater number of directors.

4 (d) A director who is present at a meeting of the board of directors or a committee of the
5 board of directors when corporate action is taken is deemed to have assented to the action taken
6 unless: (1) the director objects at the beginning of the meeting (or promptly upon arrival) to holding
7 it or transacting business at the meeting; (2) the dissent or abstention from the action taken is
8 entered in the minutes of the meeting; or (3) the director delivers written notice of the director's
9 dissent or abstention to the presiding officer of the meeting before its adjournment or to the
10 corporation immediately after adjournment of the meeting. The right of dissent or abstention is not
11 available to a director who votes in favor of the action taken.

12 293-A:8.25 Committees.

13 (a) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a
14 board of directors may create one or more committees and appoint one or more members of the board
15 of directors to serve on any such committee.

16 (b) Unless this chapter otherwise provides, the creation of a committee and appointment
17 of members to it must be approved by the greater of (1) a majority of all the directors in office when
18 the action is taken, or (2) the number of directors required by the articles of incorporation or bylaws
19 to take action under RSA 293-A:8.24.

20 (c) RSA 293-A:8.20 through RSA 293-A:8.24 apply both to committees of the board and to
21 their members.

22 (d) To the extent specified by the board of directors or in the articles of incorporation or
23 bylaws, each committee may exercise the powers of the board of directors under RSA 293-A:8.01.

24 (e) A committee may not, however:

25 (1) authorize or approve distributions, except according to a formula or method, or
26 within limits, prescribed by the board of directors;

27 (2) approve or propose to shareholders action that this chapter requires be approved
28 by shareholders;

29 (3) fill vacancies on the board of directors or, subject to subsection (g), on any of its
30 committees; or

31 (4) adopt, amend, or repeal bylaws.

32 (f) The creation of, delegation of authority to, or action by a committee does not alone
33 constitute compliance by a director with the standards of conduct described in RSA 293-A:8.30.

34 (g) The board of directors may appoint one or more directors as alternate members of
35 any committee to replace any absent or disqualified member during the member's absence or
36 disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the
37 committee provide otherwise, in the event of the absence or disqualification of a member of a

1 committee, the member or members present at any meeting and not disqualified from voting,
2 unanimously, may appoint another director to act in place of the absent or disqualified member.

3 293-A:8.26 Submission of Matters for Shareholder Vote. A corporation may agree to submit a
4 matter to a vote of its shareholders even if, after approving the matter, the board of directors
5 determines it no longer recommends the matter.

6 Part C

7 Standards of Conduct

8 293-A:8.30 Standards of Conduct for Directors.

9 (a) Each member of the board of directors, when discharging the duties of a director,
10 shall act: (1) in good faith, and (2) in a manner the director reasonably believes to be in the best
11 interests of the corporation.

12 (b) The members of the board of directors or a committee of the board, when becoming
13 informed in connection with their decision-making function or devoting attention to their oversight
14 function, shall discharge their duties with the care that a person in a like position would reasonably
15 believe appropriate under similar circumstances.

16 (c) In discharging board or committee duties a director shall disclose, or cause to be
17 disclosed, to the other board or committee members information not already known by them but
18 known by the director to be material to the discharge of their decision-making or oversight functions,
19 except that disclosure is not required to the extent that the director reasonably believes that doing so
20 would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a
21 professional ethics rule.

22 (d) In discharging board or committee duties a director who does not have knowledge
23 that makes reliance unwarranted is entitled to rely on the performance by any of the persons
24 specified in subsection (f)(1) or subsection (f)(3) to whom the board may have delegated, formally or
25 informally by course of conduct, the authority or duty to perform one or more of the board's functions
26 that are delegable under applicable law.

27 (e) In discharging board or committee duties a director who does not have knowledge
28 that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements,
29 including financial statements and other financial data, prepared or presented by any of the persons
30 specified in subsection (f).

31 (f) A director is entitled to rely, in accordance with subsection (d) or (e), on:

32 (1) one or more officers or employees of the corporation whom the director reasonably
33 believes to be reliable and competent in the functions performed or the information, opinions,
34 reports, or statements provided;

35 (2) legal counsel, public accountants, or other persons retained by the corporation as to
36 matters involving skills or expertise the director reasonably believes are matters (i) within the particular
37 person's professional or expert competence or (ii) as to which the particular person merits confidence; or

(3) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

293-A:8.31 [Reserved.]

293-A:8.32 [Reserved.]

293-A:8.33 Directors' Liability for Unlawful Distributions.

(a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to RSA 293-A:6.40(a) or RSA 293-A:14.09(a) is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating RSA 293-A:6.40(a) or RSA 293-A:14.09(a) if the party asserting liability establishes that when taking the action the director did not comply with RSA 293-A:8.30.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to:

(1) contribution from every other director who could be held liable under subsection (a) for the unlawful distribution; and

(2) recoupment from each shareholder of the pro-rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of RSA 293-A:6.40(a) or RSA 293-A:14.09(a).

(c) A proceeding to enforce:

(1) the liability of a director under subsection (a) is barred unless it is commenced within 2 years after the date: (i) on which the effect of the distribution was measured under RSA 293-A:6.40(e) or (g); (ii) as of which the violation of RSA 293-A:6.40(a) occurred as the consequence of disregard of a restriction in the articles of incorporation; or (iii) on which the distribution of assets to shareholders under RSA 293-A:14.09(a) was made; or

(2) contribution or recoupment under subsection (b) is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a).

Part D

Officers

293-A:8.40 Officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall assign to one of the officers responsibility for preparing the minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation required to be kept under RSA 293-A:16.01(a) and RSA 293-A:16.01(e).

(d) The same individual may simultaneously hold more than one office in a corporation.

1 293-A:8.41 Functions of Officers. Each officer has the authority and shall perform the functions
2 set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the
3 board of directors or by direction of an officer authorized by the board of directors to prescribe the
4 functions of other officers.

5 293-A:8.42 Standards of Conduct for Officers.

6 (a) An officer, when performing in such capacity, has the duty to act:

7 (1) in good faith;

8 (2) with the care that a person in a like position would reasonably exercise under
9 similar circumstances; and

10 (3) in a manner the officer reasonably believes to be in the best interests of the
11 corporation.

12 (b) The duty of an officer includes the obligation:

13 (1) to inform the superior officer to whom, or the board of directors or the committee
14 thereof to which, the officer reports of information about the affairs of the corporation known to the
15 officer, within the scope of the officer's functions, and known to the officer to be material to such
16 superior officer, board, or committee; and

17 (2) to inform his or her superior officer, or another appropriate person within the
18 corporation, or the board of directors, or a committee thereof, of any actual or probable material
19 violation of law involving the corporation or material breach of duty to the corporation by an officer,
20 employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

21 (c) In discharging his or her duties, an officer who does not have knowledge that makes
22 reliance unwarranted is entitled to rely on:

23 (1) the performance of properly delegated responsibilities by one or more employees
24 of the corporation whom the officer reasonably believes to be reliable and competent in performing
25 the responsibilities delegated; or

26 (2) information, opinions, reports, or statements, including financial statements and
27 other financial data, prepared or presented by one or more employees of the corporation whom the
28 officer reasonably believes to be reliable and competent in the matters presented or by legal counsel,
29 public accountants, or other persons retained by the corporation as to matters involving skills or
30 expertise the officer reasonably believes are matters (i) within the particular person's professional or
31 expert competence or (ii) as to which the particular person merits confidence.

32 (d) An officer shall not be liable to the corporation or its shareholders for any decision to
33 take or not to take action, or any failure to take any action, as an officer, if the duties of the office are
34 performed in compliance with this section. Whether an officer who does not comply with this section
35 shall have liability will depend in such instance on applicable law.

36 293-A:8.43 Resignation and Removal of Officers.

37 (a) An officer may resign at any time by delivering notice to the corporation. A
38 resignation is effective when the notice is delivered unless the notice specifies a later effective time.

1 If a resignation is made effective at a later time and the board or the appointing officer accepts the
2 future effective time, the board or the appointing officer may fill the pending vacancy before the
3 effective time if the board or the appointing officer provides that the successor does not take office
4 until the effective time.

5 (b) An officer may be removed at any time with or without cause by: (i) the board of
6 directors; (ii) the officer who appointed such officer, unless the bylaws or the board of directors
7 provide otherwise; or (iii) any other officer if authorized by the bylaws or the board of directors.

8 (c) In this section, “appointing officer” means the officer (including any successor to that
9 officer) who appointed the officer resigning or being removed.

10 293-A:8.44 Contract Rights of Officers.

11 (a) The appointment of an officer does not itself create contract rights.

12 (b) An officer’s removal does not affect the officer’s contract rights, if any, with the
13 corporation. An officer’s resignation does not affect the corporation’s contract rights, if any, with the
14 officer.

15 Part E

16 Indemnification and Advance for Expenses

17 293-A:8.50 Subdivision Definitions.

18 (a) In this subdivision:

19 (1) “Corporation” includes any domestic or foreign predecessor entity of a corporation
20 in a merger.

21 (2) “Director” or “officer” means an individual who is or was a director or officer,
22 respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at
23 the corporation’s request as a director, officer, manager, partner, trustee, employee, or agent of
24 another entity or employee benefit plan. A director or officer is considered to be serving an employee
25 benefit plan at the corporation’s request if the individual’s duties to the corporation also impose
26 duties on, or otherwise involve services by, the individual to the plan or to participants in or
27 beneficiaries of the plan. “Director” or “officer” includes, unless the context requires otherwise, the
28 estate or personal representative of a director or officer.

29 (3) “Liability” means the obligation to pay a judgment, settlement, penalty, fine
30 (including an excise tax assessed with respect to an employee benefit plan) or reasonable expenses
31 incurred with respect to a proceeding.

32 (4) “Official capacity” means: (i) when used with respect to a director, the office of
33 director in a corporation; and (ii) when used with respect to an officer, as contemplated in RSA 293-
34 A:8.56, the office in a corporation held by the officer. “Official capacity” does not include service for
35 any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit
36 plan, or other entity.

37 (5) “Party” means an individual who was, is, or is threatened to be made, a
38 defendant or respondent in a proceeding.

1 (6) “Proceeding” means any threatened, pending, or completed action, suit, or
2 proceeding, whether civil, criminal, administrative, arbitrative, or investigative, and whether formal
3 or informal.

4 293-A:8.51 Permissible Indemnification.

5 (a) Except as otherwise provided in this section, a corporation may indemnify an
6 individual who is a party to a proceeding because the individual is a director against liability
7 incurred in the proceeding if:

8 (1)(i) the director conducted himself or herself in good faith; and

9 (ii) reasonably believed:

10 (A) in the case of conduct in an official capacity, that his or her conduct was
11 in the best interests of the corporation; and

12 (B) in all other cases, that the director’s conduct was at least not opposed to
13 the best interests of the corporation; and

14 (C) in the case of any criminal proceeding, the director had no reasonable
15 cause to believe his or her conduct was unlawful; or

16 (b) the director engaged in conduct for which broader indemnification has been made
17 permissible or obligatory under a provision of the articles of incorporation (as authorized by
18 RSA 293-A:2.02(b)(5)).

19 (c) A director’s conduct with respect to an employee benefit plan for a purpose the
20 director reasonably believed to be in the interests of the participants in, and the beneficiaries of, the
21 plan is conduct that satisfies the requirement of RSA 293-A:8.51(a)(1)(ii)(B).

22 (d) The termination of a proceeding by judgment, order, settlement, or conviction, or
23 upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did
24 not meet the relevant standard of conduct described in this section.

25 (e) Unless ordered by a court under RSA 293-A:8.54(a)(3), a corporation may not
26 indemnify a director:

27 (1) in connection with a proceeding by or in the right of the corporation, except for
28 expenses incurred in connection with the proceeding if it is determined that the director has met the
29 relevant standard of conduct under subsection (a); or

30 (2) in connection with any proceeding with respect to conduct for which the director
31 was adjudged liable on the basis of receiving a financial benefit to which he or she was not entitled,
32 whether or not involving action in the director’s official capacity.

33 293-A:8.52 Mandatory Indemnification. A corporation shall indemnify a director who was
34 wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director
35 was a party because he or she was a director of the corporation against expenses incurred by the
36 director in connection with the proceeding.

37 293-A:8.53 Advance for Expenses.

1 (a) A corporation may, before final disposition of a proceeding, advance funds to pay for
2 or reimburse expenses incurred in connection with the proceeding by an individual who is a party to
3 the proceeding because that individual is a member of the board of directors if the director delivers to
4 the corporation:

5 (1) a signed written affirmation of the director's good faith belief that the relevant
6 standard of conduct described in RSA 293-A:8.51 has been met by the director or that the proceeding
7 involves conduct for which liability has been eliminated under a provision of the articles of
8 incorporation as authorized by RSA 293-A:2.02(b)(4); and

9 (2) a signed written undertaking of the director to repay any funds advanced if the
10 director is not entitled to mandatory indemnification under RSA 293-A:8.52 and it is ultimately
11 determined under RSA 293-A:8.54 or RSA 293-A:8.55 that the director has not met the relevant
12 standard of conduct described in RSA 293-A:8.51.

13 (b) The undertaking required by subsection (a)(2) must be an unlimited general
14 obligation of the director but need not be secured and may be accepted without reference to the
15 financial ability of the director to make repayment.

16 (c) Authorizations under this section shall be made:

17 (1) by the board of directors:

18 (i) if there are 2 or more qualified directors, by a majority vote of all the qualified
19 directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the
20 members of a committee of 2 or more qualified directors appointed by such a vote; or

21 (ii) if there are fewer than 2 qualified directors, by the vote necessary for action
22 by the board in accordance with RSA 293-A:8.24(c), in which authorization directors who are not
23 qualified directors may participate; or

24 (2) by the shareholders, but shares owned by or voted under the control of a director
25 who at the time is not a qualified director may not be voted on the authorization.

26 293-A:8.54 Court-Ordered Indemnification and Advance for Expenses.

27 (a) A director who is a party to a proceeding because he or she is a director may apply for
28 indemnification or an advance for expenses to the court conducting the proceeding or to another
29 court of competent jurisdiction. After receipt of an application and after giving any notice it
30 considers necessary, the court shall:

31 (1) order indemnification if the court determines that the director is entitled to
32 mandatory indemnification under RSA 293-A:8.52;

33 (2) order indemnification or advance for expenses if the court determines that the
34 director is entitled to indemnification or advance for expenses pursuant to a provision authorized by
35 RSA 293-A:8.58(a); or

36 (3) order indemnification or advance for expenses if the court determines, in view of
37 all the relevant circumstances, that it is fair and reasonable:

1 (i) to indemnify the director; or
 2 (ii) to advance expenses to the director, even if he or she has not met the relevant
 3 standard of conduct set forth in RSA 293-A:8.51(a), failed to comply with RSA 293-A:8.53, or was
 4 adjudged liable in a proceeding referred to in RSA 293-A:8.51(e)(1) or (e)(2), but if the director was
 5 adjudged so liable indemnification shall be limited to expenses incurred in connection with the
 6 proceeding.

7 (b) If the court determines that the director is entitled to indemnification under
 8 subsection (a)(1) or to indemnification or advance for expenses under subsection (a)(2), it shall also
 9 order the corporation to pay the director's expenses incurred in connection with obtaining court-
 10 ordered indemnification or advance for expenses. If the court determines that the director is entitled
 11 to indemnification or advance for expenses under subsection (a)(3), it may also order the corporation
 12 to pay the director's expenses to obtain court-ordered indemnification or advance for expenses.

13 293-A:8.55 Determination and Authorization of Indemnification.

14 (a) A corporation may not indemnify a director under RSA 293-A:8.51 unless authorized
 15 for a specific proceeding after a determination has been made that indemnification is permissible
 16 because the director has met the relevant standard of conduct set forth in RSA 293-A:8.51.

17 (b) The determination shall be made:

18 (1) if there are 2 or more qualified directors, by the board of directors by a majority vote
 19 of all the qualified directors (a majority of whom shall for such purpose constitute a quorum) or by a
 20 majority of the members of a committee of 2 or more qualified directors appointed by such a vote;

21 (2) by special legal counsel:

22 (i) selected in the manner prescribed in subdivision (1); or

23 (ii) if there are fewer than 2 qualified directors, selected by the board of directors,
 24 (in which selection directors who are not qualified directors may participate); or

25 (3) by the shareholders, but shares owned by or voted under the control of a director
 26 who at the time is not a qualified director may not be voted on the determination.

27 (c) Authorization of indemnification shall be made in the same manner as the
 28 determination that indemnification is permissible except that if there are fewer than 2 qualified
 29 directors, or if the determination is made by special legal counsel, authorization of indemnification
 30 shall be made by those entitled to select special legal counsel under subsection (b)(2)(ii).

31 293-A:8.56 Indemnification of Officers.

32 (a) A corporation may indemnify and advance expenses under this subdivision to an officer of
 33 the corporation who is a party to a proceeding because he or she is an officer of the corporation:

34 (1) to the same extent as a director; and

35 (2) if he or she is an officer but not a director, to such further extent as may be
 36 provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract
 37 except for:

1 (i) liability in connection with a proceeding by or in the right of the corporation
2 other than for expenses incurred in connection with the proceeding; or

3 (ii) liability arising out of conduct that constitutes:

4 (A) receipt by the officer of a financial benefit to which he or she is not
5 entitled;

6 (B) an intentional infliction of harm on the corporation or the shareholders;
7 or

8 (C) an intentional violation of criminal law.

9 (b) The provisions of subsection (a)(2) shall apply to an officer who is also a director if the
10 basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

11 (c) An officer of a corporation who is not a director is entitled to mandatory
12 indemnification under RSA 293-A:8.52, and may apply to a court under RSA 293-A:8.54 for
13 indemnification or an advance for expenses, in each case to the same extent to which a director may
14 be entitled to indemnification or advance for expenses under those provisions.

15 293-A:8.57 Insurance. A corporation may purchase and maintain insurance on behalf of an
16 individual who is a director or officer of the corporation, or who, while a director or officer of the
17 corporation, serves at the corporation's request as a director, officer, manager, partner, trustee,
18 employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust,
19 employee benefit plan, or other entity, against liability asserted against or incurred by the individual
20 in that capacity or arising from his or her status as a director or officer, whether or not the
21 corporation would have power to indemnify or advance expenses to the individual against the same
22 liability under this subdivision.

23 293-A:8.58 Variation by Corporate Action; Application of Subdivision.

24 (a) A corporation may, by a provision in its articles of incorporation or bylaws or in a
25 resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in
26 advance of the act or omission giving rise to a proceeding to provide indemnification in accordance
27 with RSA 293-A:8.51 or advance funds to pay for or reimburse expenses in accordance with RSA 293-
28 A:8.53. Any such obligatory provision shall be deemed to satisfy the requirements for authorization
29 referred to in RSA 293-A:8.53(c) and in RSA 293-A:8.55(c). Any such provision that obligates the
30 corporation to provide indemnification to the fullest extent permitted by law shall be deemed to
31 obligate the corporation to advance funds to pay for or reimburse expenses in accordance with
32 RSA 293-A:8.53 to the fullest extent permitted by law, unless the provision specifically provides
33 otherwise.

34 (b) Any provision pursuant to subsection (a) shall not obligate the corporation to
35 indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct
36 with respect to the predecessor, unless otherwise specifically provided. Any provision for
37 indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the

board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by RSA 293-A:11.07(a) (4).

(c) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this subdivision.

(d) This subdivision does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearing as a witness in a proceeding at a time when he or she is not a party.

(e) This subdivision does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

293-A:8.59 Exclusivity of Subdivision. A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this subdivision.

293-A:8.60 Subdivision Definitions.

(a) In this subdivision:

(1) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation:

(i) to which, at the relevant time, the director is a party; or

(ii) respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(iii) respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) "Control," including the term "controlled by," means (i) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise, or (ii) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(3) "Relevant time" means (i) the time at which directors' action respecting the transaction is taken in compliance with RSA 293-A:8.62, or (ii) if the transaction is not brought before the board of directors of the corporation (or its committee) for action under RSA 293-A:8.62, at the time the corporation (or an entity controlled by the corporation) becomes legally obligated to consummate the transaction.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

(i) the director's spouse;

(ii) a child, stepchild, grandchild, parent, step parent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew (or spouse of any thereof) of the director or of the director's spouse;

(iii) an individual living in the same home as the director;

(iv) an entity (other than the corporation or an entity controlled by the corporation) controlled by the director or any person specified above in this subdivision (5);

(v) a domestic or foreign (A) business or nonprofit corporation (other than the corporation or an entity controlled by the corporation) of which the director is a director, (B) unincorporated entity of which the director is a general partner or a member of the governing body, or (C) individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative, or like fiduciary; or

(vi) a person that is, or an entity that is controlled by, an employer of the director.

(6) "Fair to the corporation" means, for purposes of RSA 293-A:8.61(b)(3), that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (i) fair in terms of the director's dealings with the corporation, and (ii) comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(7) "Required disclosure" means disclosure of (i) the existence and nature of the director's conflicting interest, and (ii) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

293-A:8.61 Judicial Action.

(a) A transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation) may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if:

(1) directors' action respecting the transaction was taken in compliance with RSA 293-A:8.62 at any time; or

(2) shareholders' action respecting the transaction was taken in compliance with RSA 293-A:8.63 at any time; or

(3) the transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

1 293-A:8.62 Directors' Action.

2 (a) Directors' action respecting a director's conflicting interest transaction is effective for
3 purposes of RSA 293-A:8.61(b)(1) if the transaction has been authorized by the affirmative vote of a
4 majority (but no fewer than 2) of the qualified directors who voted on the transaction, after required
5 disclosure by the conflicted director of information not already known by such qualified directors, or
6 after modified disclosure in compliance with subsection (b), provided that:

7 (1) the qualified directors have deliberated and voted outside the presence of and
8 without the participation by any other director; and

9 (2) where the action has been taken by a committee, all members of the committee
10 were qualified directors, and either (i) the committee was composed of all the qualified directors on
11 the board of directors or (ii) the members of the committee were appointed by the affirmative vote of
12 a majority of the qualified directors on the board.

13 (b) Notwithstanding subsection (a), when a transaction is a director's conflicting interest
14 transaction only because a related person described in clause (v) or clause (vi) of RSA 293-
15 A:8.60(a)(5) is a party to or has a material financial interest in the transaction, the conflicted director
16 is not obligated to make required disclosure to the extent that the director reasonably believes that
17 doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality,
18 or a professional ethics rule, provided that the conflicted director discloses to the qualified directors
19 voting on the transaction:

20 (1) all information required to be disclosed that is not so violative,

21 (2) the existence and nature of the director's conflicting interest, and

22 (3) the nature of the conflicted director's duty not to disclose the confidential
23 information.

24 (c) A majority (but no fewer than 2) of all the qualified directors on the board of directors,
25 or on the committee, constitutes a quorum for purposes of action that complies with this section.

26 (d) Where directors' action under this section does not satisfy a quorum or voting
27 requirement applicable to the authorization of the transaction by reason of the articles of
28 incorporation, the bylaws or a provision of law, independent action to satisfy those authorization
29 requirements must be taken by the board of directors or a committee, in which action directors who
30 are not qualified directors may participate.

31 293-A:8.63 Shareholders' Action.

32 (a) Shareholders' action respecting a director's conflicting interest transaction is effective
33 for purposes of RSA 293-A:8.61(b)(2) if a majority of the votes cast by the holders of all qualified
34 shares are in favor of the transaction after (1) notice to shareholders describing the action to be
35 taken respecting the transaction; (2) provision to the corporation of the information referred to in
36 subsection (b); and (3) communication to the shareholders entitled to vote on the transaction of the
37 information that is the subject of required disclosure, to the extent the information is not known by

them. In the case of shareholders' action at a meeting, the shareholders entitled to vote shall be determined as of the record date for notice of the meeting.

(b) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (c), and the identity of the holders of those shares.

(c) For purposes of this section: (1) “holder” means and “held by” refers to shares held by both a record shareholder (as defined in RSA 293-A:13.01(a)(11)) and a beneficial shareholder (as defined in RSA 293-A:13.01(a)(2)); and (2) “qualified shares” means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) is notified, are held by (A) a director who has a conflicting interest respecting the transaction or (B) a related person of the director (excluding a person described in clause (vi) of RSA 293-A:8.60(a)(5)).

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (e), shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) solely because of a director's failure to comply with subsection (b), and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director, and may give such effect, if any, to the shareholders' vote, as the court considers appropriate in the circumstances.

(f) Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

Part G

Business Opportunities

293-A:8.70 Business Opportunities.

(a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

(1) action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in RSA 293-A:8.62, as if the decision being made concerned a director's conflicting interest transaction; or

SB 205 – AS INTRODUCED
- Page 65 -

1 the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be
2 approved by the adoption by the corporation of a plan of domestication in the manner provided in
3 this subdivision. The laws of the foreign jurisdiction shall govern the effect of domesticating in that
4 jurisdiction.

5 (c) The plan of domestication adopted by a domestic business corporation shall include:

6 (1) a statement of the jurisdiction in which the corporation is to be domesticated;

7 (2) the terms and conditions of the domestication;

8 (3) the manner and basis of reclassifying the shares of the corporation following its
9 domestication into shares or other securities, obligations, rights to acquire shares or other securities,
10 cash, other property, or any combination of the foregoing; and

11 (4) any desired amendments to the articles of incorporation of the corporation
12 following its domestication.

13 The plan of domestication may include any other provision relating to the domestication that may be
14 desired.

15 (d) The plan of domestication may include a provision that the plan may be amended
16 prior to filing the document required by the laws of this state or the other jurisdiction to consummate
17 the domestication, except that subsequent to approval of the plan by the shareholders the plan may
18 not be amended to change:

19 (1) the amount or kind of shares or other securities, obligations, rights to acquire
20 shares or other securities, cash, or other property to be received by the shareholders under the plan;

21 (2) the articles of incorporation as they will be in effect immediately following the
22 domestication, except for changes permitted by RSA 293-A:10.05 or by comparable provisions of the
23 laws of the other jurisdiction; or

24 (3) any of the other terms or conditions of the plan if the change would adversely
25 affect any of the shareholders in any material respect.

26 (e) Terms of a plan of domestication may be made dependent upon facts objectively
27 ascertainable outside the plan in accordance with RSA 293-A:1.20(j).

28 (f) If any debt security, note or similar evidence of indebtedness for money borrowed,
29 whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic
30 business corporation before January 1, 2013 contains a provision applying to a merger of the
31 corporation and the document does not refer to a domestication of the corporation, the provision shall
32 be deemed to apply to a domestication of the corporation until such time as the provision is amended
33 subsequent to that date.

34 293-A:9.21 Action on a Plan of Domestication.

35 (a) In the case of a domestication of a domestic business corporation in a foreign
36 jurisdiction:

37 (1) The plan of domestication must be adopted by the board of directors.

1 (2) After adopting the plan of domestication, the board of directors must submit the
2 plan to the shareholders for their approval. The board of directors must also transmit to the
3 shareholders a recommendation that the shareholders approve the plan, unless (i) the board of
4 directors makes a determination that because of conflicts of interest or other special circumstances it
5 should not make such a recommendation or (ii) RSA 293-A:8.26 applies. If (i) or (ii) applies, the
6 board of directors shall transmit to the shareholders the basis for that determination.

7 (3) The board of directors may condition its submission of the plan of domestication
8 to the shareholders on any basis.

9 (4) If the approval of the shareholders is to be given at a meeting, the corporation
10 must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at
11 which the plan of domestication is to be submitted for approval. The notice must state that the
12 purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be
13 accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy
14 of the articles of incorporation as they will be in effect immediately after the domestication.

15 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
16 RSA 293-A:9.21(a)(3), requires a greater vote or a greater number of votes to be present, approval of
17 the plan of domestication requires the approval of each voting group entitled to vote separately on
18 the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

19 (6) Separate voting by voting groups is required by each class or series of shares
20 that:

21 (i) are to be reclassified under the plan of domestication into other securities,
22 obligations, rights to acquire shares or other securities, cash, other property, or any combination of
23 the foregoing;

24 (ii) would be entitled to vote as a separate group on a provision of the plan that,
25 if contained in a proposed amendment to articles of incorporation, would require action by separate
26 voting groups under RSA 293-A:10.04; or

27 (iii) is entitled under the articles of incorporation to vote as a voting group to
28 approve an amendment of the articles.

29 (7) If any provision of the articles of incorporation, bylaws, or an agreement to which
30 any of the directors or shareholders are parties, adopted or entered into before January 1, 2013,
31 applies to a merger of the corporation and that document does not refer to a domestication of the
32 corporation, the provision shall be deemed to apply to a domestication of the corporation until such
33 time as the provision is amended subsequent to that date.

34 (8) A plan of domestication may be approved for a participating corporation by
35 written consent of shareholders entitled to vote, as provided in RSA 293-A:7.04. If the plan of
36 domestication is approved by written consent of all shareholders, whether or not entitled to vote, a
37 resolution of the board of directors of the participating corporation approving, proposing, submitting,

1 recommending, or otherwise respecting the plan of domestication is not necessary and shareholders
2 of the participating corporation are not entitled to receive notice of or to dissent from the plan of
3 domestication.

4 293-A:9.22 Articles of Domestication.

5 (a) After the domestication of a foreign business corporation has been authorized as
6 required by the laws of the foreign jurisdiction, articles of domestication shall be signed by any
7 officer or other duly authorized representative. The articles shall set forth:

8 (1) the name of the corporation immediately before the filing of the articles of
9 domestication and, if that name is unavailable for use in this state or the corporation desires to
10 change its name in connection with the domestication, a name that satisfies the requirements of
11 RSA 293-A:4.01;

12 (2) the jurisdiction of incorporation of the corporation immediately before the filing of
13 the articles of domestication and the date the corporation was incorporated in that jurisdiction; and

14 (3) a statement that the domestication of the corporation in this state was duly
15 authorized as required by the laws of the jurisdiction in which the corporation was incorporated
16 immediately before its domestication in this state.

17 (b) The articles of domestication shall either contain all of the provisions that RSA 293-
18 A:2.02(a) requires to be set forth in articles of incorporation and any other desired provisions that
19 RSA 293-A:2.02(b) permits to be included in articles of incorporation, or shall have attached articles
20 of incorporation. In either case, provisions that would not be required to be included in restated
21 articles of incorporation may be omitted.

22 (c) The articles of domestication shall be delivered to the secretary of state for filing, and
23 shall take effect at the effective time provided in RSA 293-A:1.23.

24 (d) If the foreign corporation is authorized to transact business in this state under RSA
25 293-A:15.01 through RSA 293-A:15.32, its certificate of authority shall be cancelled automatically on
26 the effective date of its domestication.

27 293-A:9.23 Surrender of Charter Upon Domestication.

28 (a) Whenever a domestic business corporation has adopted and approved, in the manner
29 required by this subdivision, a plan of domestication providing for the corporation to be domesticated
30 in a foreign jurisdiction, articles of charter surrender shall be signed on behalf of the corporation by
31 any officer or other duly authorized representative. The articles of charter surrender shall set forth:

32 (1) the name of the corporation;

33 (2) a statement that the articles of charter surrender are being filed in connection
34 with the domestication of the corporation in a foreign jurisdiction;

35 (3) a statement that the domestication was duly approved by the shareholders and, if
36 voting by any separate voting group was required, by each such separate voting group, in the
37 manner required by this chapter and the articles of incorporation; and

1 (4) the corporation's new jurisdiction of incorporation.

2 (b) The articles of charter surrender shall be delivered by the corporation to the
3 secretary of state for filing. The articles of charter surrender shall take effect on the effective time
4 provided in RSA 293-A:1.23.

5 293-A:9.24 Effect of Domestication.

6 (a) When a domestication of a foreign business corporation in New Hampshire becomes
7 effective:

8 (1) the title to all real and personal property, both tangible and intangible, of the
9 corporation remains in the corporation without reversion or impairment;

10 (2) the liabilities of the corporation remain the liabilities of the corporation;

11 (3) an action or proceeding pending against the corporation continues against the
12 corporation as if the domestication had not occurred;

13 (4) the articles of domestication, or the articles of incorporation attached to the
14 articles of domestication, constitute the articles of incorporation of a foreign corporation
15 domesticating in this state;

16 (5) the shares of the corporation are reclassified into other shares, other securities,
17 obligations, rights to acquire shares or other securities of the corporation, or into cash or other
18 property in accordance with the terms of the domestication as approved under the laws of the foreign
19 jurisdiction, and the shareholders are entitled only to the rights provided by those terms and under
20 those laws; and

21 (6) the corporation is deemed to:

22 (i) be incorporated under and subject to the organic law of the domesticated
23 corporation for all purposes;

24 (ii) be the same corporation without interruption as the domesticating
25 corporation; and

26 (iii) have been incorporated on the date the domesticating corporation was
27 originally incorporated.

28 (b) When a domestication of a domestic business corporation in a foreign jurisdiction
29 becomes effective, the foreign business corporation is deemed to:

30 (1) appoint the secretary of state as its agent for service of process in a proceeding to
31 enforce the rights of shareholders who exercise appraisal rights in connection with the
32 domestication; and

33 (2) agree that it will promptly pay the amount, if any, to which such shareholders
34 are entitled under RSA 293-A:13.01 through RSA 293-A:13.40.

35 (c) The owner liability of a shareholder in a foreign corporation that is domesticated in
36 this state shall be as follows:

37 (1) The domestication does not discharge any owner liability under the laws of the

foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication.

(2) The shareholder shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.

(3) The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by subparagraph (1), as if the domestication had not occurred.

(4) The shareholder shall have whatever rights of contribution from other shareholders are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by subparagraph (1), as if the domestication had not occurred.

293-A:9.25 Abandonment of a Domestication.

(a) Unless otherwise provided in a plan of domestication of a domestic business corporation, after the plan has been adopted and approved as required by this subdivision, and at any time before the domestication has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a domestication is abandoned under subsection (a) after articles of charter surrender have been filed with the secretary of state but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the domestication. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

(c) If the domestication of a foreign business corporation in this state is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the secretary of state, a statement that the domestication has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing. The statement shall take effect upon filing and the domestication shall be deemed abandoned and shall not become effective.

Part C

Nonprofit Conversion

293-A:9.30 Nonprofit Conversion.

(a) A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion.

(b) A domestic business corporation may become a foreign nonprofit corporation if the nonprofit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of nonprofit conversion, the foreign nonprofit conversion shall be approved by the adoption by the domestic business corporation of a

1 plan of nonprofit conversion in the manner provided in this subdivision. The laws of the foreign
2 jurisdiction govern the effect of the foreign nonprofit conversion.

3 (c) The plan of nonprofit conversion must include:

4 (1) the terms and conditions of the conversion;

5 (2) the manner and basis of reclassifying the shares of the corporation following its
6 conversion into memberships, if any, or securities, obligations, rights to acquire memberships or
7 securities, cash, other property, or any combination of the foregoing;

8 (3) any desired amendments to the articles of incorporation of the corporation
9 following its conversion; and

10 (4) if the domestic business corporation is to be converted to a foreign nonprofit
11 corporation, a statement of the jurisdiction in which the corporation will be incorporated after the
12 conversion.

13 (d) The plan of nonprofit conversion may include any other provision relating to the
14 conversion that may be desired. The plan of nonprofit conversion may also include a provision that
15 the plan may be amended prior to filing articles of nonprofit conversion, except that subsequent to
16 approval of the plan by the shareholders the plan may not be amended to change:

17 (1) the amount or kind of memberships or securities, obligations, rights to acquire
18 memberships or securities, cash, or other property to be received by the shareholders under the plan;

19 (2) the articles of incorporation or agreement as they will be in effect immediately
20 following the conversion, except for changes permitted by RSA 293-A:10.05; or

21 (3) any of the other terms or conditions of the plan if the change would adversely
22 affect any of the shareholders in any material respect.

23 (e) Terms of a plan of nonprofit conversion may be made dependent upon facts
24 objectively ascertainable outside the plan in accordance with RSA 293-A:1.20(j).

25 (f) If any debt security, note or similar evidence of indebtedness for money borrowed,
26 whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic
27 business corporation before January 1, 2013 contains a provision applying to a merger of the
28 corporation and the document does not refer to a nonprofit conversion of the corporation, the
29 provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the
30 provision is amended subsequent to that date.

31 293-A:9.31 Action on a Plan of Nonprofit Conversion.

32 (a) In the case of a conversion of a domestic business corporation to a domestic or foreign
33 nonprofit corporation:

34 (1) The plan of nonprofit conversion must be adopted by the board of directors.

35 (2) After adopting the plan of nonprofit conversion, the board of directors must
36 submit the plan to the shareholders for their approval. The board of directors must also transmit to
37 the shareholders a recommendation that the shareholders approve the plan, unless (i) the board of

1 directors makes a determination that because of conflicts of interest or other special circumstances it
2 should not make such a recommendation or (ii) RSA 293-A:8.26 applies. If (i) or (ii) applies, the
3 board of directors shall transmit to the shareholders the basis for that determination.

4 (3) The board of directors may condition its submission of the plan of nonprofit
5 conversion to the shareholders on any basis.

6 (4) If the approval of the shareholders is to be given at a meeting, the corporation
7 must notify each shareholder of the meeting of shareholders at which the plan of nonprofit
8 conversion is to be submitted for approval. The notice must state that the purpose, or one of the
9 purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or
10 summary of the plan. The notice shall include or be accompanied by a copy of the articles of
11 incorporation or agreement as they will be in effect immediately after the nonprofit conversion.

12 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
13 RSA 293-A:9.31(a)(3), requires a greater vote or a greater number of votes to be present, approval of
14 the plan of nonprofit conversion requires the approval of each voting group entitled to vote
15 separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting
16 group.

17 (6) If any provision of the articles of incorporation, bylaws, or an agreement to which
18 any of the directors or shareholders are parties, adopted or entered into before January 1, 2013,
19 applies to a merger of the corporation and the document does not refer to a nonprofit conversion of
20 the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation
21 until such time as the provision is amended subsequent to that date.

22 (7) A plan of nonprofit conversion may be approved for a participating corporation by
23 written consent of shareholders entitled to vote, as provided in RSA 293-A:7.04. If the plan of
24 nonprofit conversion is approved by written consent of all shareholders, whether or not entitled to
25 vote, a resolution of the board of directors of the participating corporation approving, proposing,
26 submitting, recommending, or otherwise respecting the plan of nonprofit conversion is not necessary
27 and shareholders of the participating corporation are not entitled to receive notice of or to dissent
28 from the plan of nonprofit conversion.

29 293-A:9.32 Articles of Nonprofit Conversion.

30 (a) After a plan of nonprofit conversion providing for the conversion of a domestic
31 business corporation to a domestic nonprofit corporation has been adopted and approved as required
32 by this chapter, articles of nonprofit conversion shall be signed on behalf of the corporation by any
33 officer or other duly authorized representative. The articles shall set forth:

34 (1) the name of the corporation immediately before the filing of the articles of
35 nonprofit conversion and if that name does not satisfy the requirements of RSA 292 or the
36 corporation desires to change its name in connection with the conversion, a name that satisfies the
37 requirements of RSA 292;

1 (2) a statement that the plan of nonprofit conversion was duly approved by the
2 shareholders in the manner required by this chapter and the articles of incorporation.

3 (b) The articles of nonprofit conversion shall either contain all of the provisions that
4 RSA 292 requires to be set forth in articles of agreement of a domestic nonprofit corporation and any
5 other desired provisions permitted by RSA 292 or shall have attached articles of agreement that
6 satisfy the requirements of RSA 292. In either case, provisions that would not be required to be
7 included in restated articles of agreement of a domestic nonprofit corporation may be omitted.

8 (c) The articles of nonprofit conversion shall be delivered to the secretary of state for
9 filing, and shall take effect at the effective time provided in RSA 293-A:1.23.

10 293-A:9.33 Surrender of Charter Upon Foreign Nonprofit Conversion.

11 (a) Whenever a domestic business corporation has adopted and approved, in the manner
12 required by this subdivision, a plan of nonprofit conversion providing for the corporation to be
13 converted to a foreign nonprofit corporation, articles of charter surrender shall be signed on behalf of
14 the corporation by any officer or other duly authorized representative. The articles of charter
15 surrender shall set forth:

16 (1) the name of the corporation;

17 (2) a statement that the articles of charter surrender are being filed in connection
18 with the conversion of the corporation to a foreign nonprofit corporation;

19 (3) a statement that the foreign nonprofit conversion was duly approved by the
20 shareholders in the manner required by this chapter and the articles of incorporation; and

21 (4) the corporation's new jurisdiction of incorporation.

22 (b) The articles of charter surrender shall be delivered by the corporation to the
23 secretary of state for filing. The articles of charter surrender shall take effect on the effective time
24 provided in RSA 293-A:1.23.

25 293-A:9.34 Effect of Nonprofit Conversion.

26 (a) When a conversion of a domestic business corporation to a domestic nonprofit
27 corporation becomes effective:

28 (1) the title to all real and personal property, both tangible and intangible, of the
29 corporation remains in the corporation without reversion or impairment;

30 (2) the liabilities of the corporation remain the liabilities of the corporation;

31 (3) an action or proceeding pending against the corporation continues against the
32 corporation as if the conversion had not occurred;

33 (4) the articles of nonprofit conversion, or the articles of agreement attached to the
34 articles of nonprofit conversion, constitute the articles of agreement of the corporation;

35 (5) the shares of the corporation are reclassified into memberships, securities,
36 obligations, rights to acquire memberships or securities, or into cash or other property in accordance with
37 the plan of conversion, and the shareholders are entitled only to the rights provided in the plan of nonprofit
38 conversion or to any rights they may have under RSA 293-A:13.01 through RSA 293-A:13.40; and

(6) the corporation is deemed to:

(i) be a domestic nonprofit corporation for all purposes;

(ii) be the same corporation without interruption as the corporation that existed prior to the conversion; and

(iii) have been incorporated on the date that it was originally incorporated as a domestic business corporation.

(b) When a conversion of a domestic business corporation to a foreign nonprofit corporation becomes effective, the foreign nonprofit corporation is deemed to:

(1) appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

(2) agree that it will promptly pay the amount, if any, to which such shareholders are entitled under RSA 293-A:13.01 through RSA 293-A:13.40.

293-A:9.35 Abandonment of a Nonprofit Conversion.

(a) Unless otherwise provided in a plan of nonprofit conversion of a domestic business corporation, after the plan has been adopted and approved as required by this subdivision, and at any time before the nonprofit conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If a nonprofit conversion is abandoned under subsection (a) after articles of nonprofit conversion or articles of charter surrender have been filed with the secretary of state but before the nonprofit conversion has become effective, a statement that the nonprofit conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the nonprofit conversion. The statement shall take effect upon filing and the nonprofit conversion shall be deemed abandoned and shall not become effective.

Part D

Foreign Nonprofit Domestication And Conversion

293-A:9.40 Foreign Nonprofit Domestication And Conversion. A foreign nonprofit corporation may become a domestic business corporation if the domestication and conversion is permitted by the organic law of the foreign nonprofit corporation. The laws of this state shall govern the effect of converting to a domestic business corporation pursuant to RSA 293-A:9.40 through RSA 293-A:9.43.

293-A:9.41 Articles of Domestication and Conversion.

(a) After the conversion of a foreign nonprofit corporation to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication and conversion shall be signed by any officer or other duly authorized representative. The articles shall set forth:

(1) the name of the corporation immediately before the filing of the articles of domestication and conversion and, if that name is unavailable for use in this state or the corporation

desires to change its name in connection with the domestication and conversion, a name that satisfies the requirements of RSA 293-A:4.01;

(2) the jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and conversion and the date the corporation was incorporated in that jurisdiction; and

(3) a statement that the domestication and conversion of the corporation in this state was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication and conversion in this state.

(b) The articles of domestication and conversion shall either contain all of the provisions that RSA 293-A:2.02(a) requires to be set forth in articles of incorporation and any other desired provisions that RSA 293-A:2.02(b) permits to be included in articles of incorporation, or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication and conversion shall be delivered to the secretary of state for filing, and shall take effect at the effective time provided in RSA 293-A:1.23.

(d) If the foreign nonprofit corporation is authorized to transact business in this state under RSA 292, its certificate of authority shall be cancelled automatically on the effective date of its domestication and conversion.

293-A:9.42 Effect of Foreign Nonprofit Domestication and Conversion.

(a) When a domestication and conversion of a foreign nonprofit corporation to a domestic business corporation becomes effective:

(1) the title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) the liabilities of the corporation remain the liabilities of the corporation;

(3) an action or proceeding pending against the corporation continues against the corporation as if the domestication and conversion had not occurred;

(4) the articles of domestication and conversion, or the articles of incorporation attached to the articles of domestication and conversion, constitute the articles of incorporation of the corporation;

(5) shares, other securities, obligations, rights to acquire shares or other securities of the corporation, or cash or other property shall be issued or paid as provided pursuant to the laws of the foreign jurisdiction, so long as at least one share is outstanding immediately after the effective time; and

(6) the corporation is deemed to:

(i) be a domestic corporation for all purposes;

(ii) be the same corporation without interruption as the foreign nonprofit corporation; and

(iii) have been incorporated on the date the foreign nonprofit corporation was originally incorporated.

(b) The owner liability of a member of a foreign nonprofit corporation that domesticates and converts to a domestic business corporation shall be as follows:

(1) The domestication and conversion does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication and conversion.

(2) The member shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication and conversion.

(3) The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by subparagraph (1), as if the domestication and conversion had not occurred.

(4) The member shall have whatever rights of contribution from other members are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by subparagraph (1), as if the domestication and conversion had not occurred.

293-A:9.43 Abandonment of a Foreign Nonprofit Domestication and Conversion. If the domestication and conversion of a foreign nonprofit corporation to a domestic business corporation is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication and conversion have been filed with the secretary of state, a statement that the domestication and conversion has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing. The statement shall take effect upon filing and the domestication and conversion shall be deemed abandoned and shall not become effective.

Part E

Entity Conversion

293-A:9.50 Entity Conversion Authorized; Definitions.

(a) A domestic business corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion. If the organic law of the unincorporated entity does not provide for such a conversion, RSA 293-A:9.55 governs the effect of converting to that form of entity.

(b) A domestic business corporation may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction governs the effect of converting to an unincorporated entity organized in that jurisdiction.

(c) A domestic unincorporated entity may become a domestic business corporation. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of an entity conversion, the conversion shall be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the unincorporated entity. If the organic law of a

domestic unincorporated entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion shall be adopted and approved, the entity conversion effectuated, and appraisal rights exercised, in accordance with the procedures in RSA 293-A:9.50 through RSA 293-A:9.56 and RSA 293-A:13.01 through RSA 293-A:13.40. Without limiting the provisions of this subsection, a domestic unincorporated entity whose organic law does not provide procedures for the approval of an entity conversion shall be subject to RSA 293-A:9.50(e) and RSA 293-A:9.52(a)(7). For purposes of applying RSA 293-A:9.50 through RSA 293-A:9.56 and RSA 293-A:13.01 through RSA 293-A:13.40:

(1) the unincorporated entity, its interest holders, interests and organic documents taken together, shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa, as the context may require; and

(2) if a group of persons manages the business and affairs of the unincorporated entity, whether identical or not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) A foreign unincorporated entity may become a domestic business corporation if the organic law of the foreign unincorporated entity authorizes it to become a corporation in another jurisdiction. The laws of the state of New Hampshire govern the effect of conversion to a domestic business corporation pursuant to RSA 293-A:9.50 through RSA 293-A:9.56.

(e) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic business corporation before the effective date of RSA 293-A:9.50 through RSA 293-A:9.56, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is amended subsequent to that date.

(f) As used in this subdivision:

(1) “Converting entity” means the domestic business corporation or domestic unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity converting to a domestic business corporation.

(2) “Surviving entity” means the corporation or unincorporated entity that is in existence immediately after consummation of an entity conversion pursuant to this subdivision.

293-A:9.51 Plan of Entity Conversion.

(a) A plan of entity conversion must include:

(1) a statement of the type of entity the surviving entity will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) the terms and conditions of the conversion;

(3) if the surviving entity will be an unincorporated entity the manner and basis of converting the shares of the domestic business corporation following its conversion into interests or

1 other securities, obligations, rights to acquire interests or other securities, cash, other property, or
2 any combination of the foregoing;

3 (4) if the surviving entity will be a domestic business corporation, the manner and
4 the basis of converting the interest in the unincorporated entity into shares of the domestic business
5 corporation or other securities, obligations, rights to acquire interests or other securities, cash, other
6 property, or any combination of the foregoing; and

7 (5) the full text, as they will be in effect immediately after consummation of the
8 conversion, of the organic documents of the surviving entity.

9 The plan of entity conversion may include any other provisions relating to the conversion that may
10 be desired.

11 (b) The plan of entity conversion may also include a provision that the plan may be
12 amended prior to filing articles of entity conversion, except that subsequent to approval of the plan
13 by the shareholders or by the holders of voting interest in an unincorporated entity the plan may not
14 be amended to change:

15 (1) the amount or kind of shares or other securities, interests, obligations, rights to
16 acquire shares, other securities or interests, cash, or other property to be received under the plan by
17 the shareholders or interest holders;

18 (2) the organic documents that will be in effect immediately following the conversion,
19 except for changes permitted by a provision of the organic law of the surviving entity comparable to
20 RSA 293-A:10.05; or

21 (3) any of the other terms or conditions of the plan if the change would adversely
22 affect any of the shareholders or the interest holders in any material respect.

23 (c) Terms of a plan of entity conversion may be made dependent upon facts objectively
24 ascertainable outside the plan in accordance with RSA 293-A:1.20(j).

25 **293-A:9.52 Action on a Plan of Entity Conversion.**

26 (a) In the case of an entity conversion of a domestic business corporation to a domestic or
27 foreign unincorporated entity:

28 (1) The plan of entity conversion must be adopted by the board of directors.

29 (2) After adopting the plan of entity conversion, the board of directors must submit
30 the plan to the shareholders for their approval. The board of directors must also transmit to the
31 shareholders a recommendation that the shareholders approve the plan, unless (i) the board of
32 directors makes a determination that because of conflicts of interest or other special circumstances it
33 should not make such a recommendation or (ii) RSA 293-A:8.26 applies. If (i) or (ii) applies, the
34 board of directors shall transmit to the shareholders the basis for that determination.

35 (3) The board of directors may condition its submission of the plan of entity
36 conversion to the shareholders on any basis.

37 (4) If the approval of the shareholders is to be given at a meeting, the corporation
38 must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at

1 which the plan of entity conversion is to be submitted for approval. The notice must state that the
2 purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be
3 accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy
4 of the organic documents as they will be in effect immediately after the entity conversion.

5 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
6 RSA 293-A:9.52(a)(3), requires a greater vote or a greater number of votes to be present, approval of
7 the plan of entity conversion requires the approval of each voting group entitled to vote separately on
8 the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

9 (6) If any provision of the articles of incorporation, bylaws, or an agreement to which
10 any of the directors or shareholders are parties, adopted or entered into before the effective date of
11 RSA 293-A:9.50 through RSA 293-A:9.56, applies to a merger of the corporation and the document
12 does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an
13 entity conversion of the corporation until such time as the provision is subsequently amended.

14 (7) If as a result of the conversion one or more shareholders of the corporation would
15 become subject to owner liability for the debts, obligations, or liabilities of any other person or entity,
16 approval of the plan of conversion shall require the signing, by each such shareholder who does not
17 assert appraisal rights, of a separate written consent to become subject to such owner liability.

18 (8) A plan of entity conversion may be approved for a participating corporation by
19 written consent of shareholders entitled to vote, as provided in RSA 293-A:7.04. If the plan of entity
20 conversion is approved by written consent of all shareholders, whether or not entitled to vote, a
21 resolution of the board of directors of the participating corporation approving, proposing, submitting,
22 recommending, or otherwise respecting the plan of entity conversion is not necessary and
23 shareholders of the participating corporation are not entitled to receive notice of or to dissent from
24 the plan of entity conversion.

25 293-A:9.53 Articles of Entity Conversion.

26 (a) After the conversion of a domestic business corporation to a domestic unincorporated
27 entity has been adopted and approved as required by this chapter, articles of entity conversion shall
28 be signed on behalf of the corporation by any officer or other duly authorized representative. The
29 articles shall:

30 (1) set forth the name of the corporation immediately before the filing of the articles
31 of entity conversion and the name to which the name of the corporation is to be changed, which shall
32 be a name that satisfies the organic law of the surviving entity;

33 (2) state the type of unincorporated entity that the surviving entity will be;

34 (3) set forth a statement that the plan of entity conversion was duly approved by the
35 shareholders in the manner required by this chapter and the articles of incorporation; and

36 (4) if the surviving entity is a filing entity, either contain all of the provisions
37 required to be set forth in its public organic document and any other desired provisions that are

1 permitted, or have attached a public organic document; except that, in either case, provisions that
2 would not be required to be included in a restated public organic document may be omitted.

3 (b) After the conversion of a domestic unincorporated entity to a domestic business
4 corporation has been adopted and approved as required by the organic law of the unincorporated
5 entity, articles of entity conversion shall be signed on behalf of the unincorporated entity by any
6 officer or other duly authorized representative. The articles shall:

7 (1) set forth the name of the unincorporated entity immediately before the filing of
8 the articles of entity conversion and the name to which the name of the unincorporated entity is to be
9 changed, which shall be a name that satisfies the requirements of RSA 293-A:4.01;

10 (2) set forth a statement that the plan of entity conversion was duly approved in
11 accordance with the organic law of the unincorporated entity; and

12 (3) either contain all of the provisions that RSA 293-A:2.02(a) requires to be set forth
13 in articles of incorporation and any other desired provisions that RSA 293-A:2.02(b) permits to be
14 included in articles of incorporation, or have attached articles of incorporation; except that, in either
15 case, provisions that would not be required to be included in restated articles of incorporation of a
16 domestic business corporation may be omitted.

17 (c) After the conversion of a foreign unincorporated entity to a domestic business
18 corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity
19 conversion shall be signed on behalf of the foreign unincorporated entity by any officer or other duly
20 authorized representative. The articles shall:

21 (1) set forth the name of the unincorporated entity immediately before the filing of
22 the articles of entity conversion and the name to which the name of the unincorporated entity is to be
23 changed, which shall be a name that satisfies the requirements of RSA 293-A:4.01;

24 (2) set forth the jurisdiction under the laws of which the unincorporated entity was
25 organized immediately before the filing of the articles of entity conversion and the date on which the
26 unincorporated entity was organized in that jurisdiction;

27 (3) set forth a statement that the conversion of the unincorporated entity was duly
28 approved in the manner required by its organic law; and

29 (4) either contain all of the provisions that RSA 293-A:2.02(a) requires to be set forth
30 in articles of incorporation and any other desired provisions that RSA 293-A:2.02(b) permits to be
31 included in articles of incorporation, or have attached articles of incorporation; except that, in either
32 case, provisions that would not be required to be included in restated articles of incorporation of a
33 domestic business corporation may be omitted.

34 (d) The articles of entity conversion shall be delivered to the secretary of state for filing,
35 and shall take effect at the effective time provided in RSA 293-A:1.23. Articles of entity conversion
36 under RSA 293-A:9.53(a) or (b) may be combined with any required conversion filing under the
37 organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of
38 both this section and the other organic law.

1 (e) If the converting entity is a foreign unincorporated entity that is authorized to
2 transact business in this state under a provision of law similar to RSA 293-A:15.01 through RSA 293-
3 A:15.32, its certificate of authority or other type of foreign qualification shall be cancelled
4 automatically on the effective date of its conversion.

5 293-A:9.54 Surrender of Charter Upon Conversion.

6 (a) Whenever a domestic business corporation has adopted and approved, in the manner
7 required by this subdivision, a plan of entity conversion providing for the corporation to be converted
8 to a foreign unincorporated entity, articles of charter surrender shall be signed on behalf of the
9 corporation by any officer or other duly authorized representative. The articles of charter surrender
10 shall set forth:

11 (1) the name of the corporation;

12 (2) a statement that the articles of charter surrender are being filed in connection
13 with the conversion of the corporation to a foreign unincorporated entity;

14 (3) a statement that the conversion was duly approved by the shareholders in the
15 manner required by this chapter and the articles of incorporation;

16 (4) the jurisdiction under the laws of which the surviving entity will be organized;
17 and

18 (5) if the surviving entity will be a nonfiling entity, the address of its executive office
19 immediately after the conversion.

20 (b) The articles of charter surrender shall be delivered by the corporation to the
21 secretary of state for filing. The articles of charter surrender shall take effect on the effective time
22 provided in RSA 293-A:1.23.

23 293-A:9.55 Effect of Entity Conversion.

24 (a) When a conversion under this subdivision in which the surviving entity is a domestic
25 business corporation or domestic unincorporated entity becomes effective:

26 (1) the title to all real and personal property, both tangible and intangible, of the
27 converting entity remains in the surviving entity without reversion or impairment;

28 (2) the liabilities of the converting entity remain the liabilities of the surviving
29 entity;

30 (3) an action or proceeding pending against the converting entity continues against
31 the surviving entity as if the conversion had not occurred;

32 (4) in the case of a surviving entity that is a filing entity, the articles of conversion,
33 or the articles of incorporation or public organic document attached to the articles of conversion,
34 constitute the articles of incorporation or public organic document of the surviving entity;

35 (5) in the case of a surviving entity that is a nonfiling entity, its private organic
36 document provided for in the plan of conversion constitutes the private organic document of the
37 surviving entity;

1 (6) the shares or interests of the converting entity are reclassified into shares,
2 interests, other securities, obligations, rights to acquire shares, interests or other securities of the
3 surviving entity, or into cash or other property in accordance with the plan of conversion; and the
4 shareholders or interest holders of the converting entity are entitled only to the rights provided in
5 the plan of conversion and to any other rights they may have under the organic law of the
6 converting entity; and

7 (7) the surviving entity is deemed to:

8 (i) be a domestic business corporation or unincorporated entity for all purposes;

9 (ii) be the same corporation or unincorporated entity without interruption as the
10 converting entity; and

11 (iii) have been incorporated or otherwise organized on the date that the
12 converting entity was originally incorporated or organized.

13 (b) When a conversion of a domestic business corporation to a foreign unincorporated
14 entity becomes effective, the surviving entity is deemed to:

15 (1) appoint the secretary of state as its agent for service of process in a proceeding to
16 enforce the rights of shareholders who exercise appraisal rights in connection with the conversion;
17 and

18 (2) agree that it will promptly pay the amount, if any, to which such shareholders
19 are entitled under RSA 293-A:13.01 through RSA 293-A:13.40.

20 (c) A shareholder who becomes subject to owner liability for some or all of the debts,
21 obligations, or liabilities of the surviving entity shall be personally liable only for those debts,
22 obligations, or liabilities of the surviving entity that arise after the effective time of the articles of
23 entity conversion.

24 (d) The owner liability of an interest holder in an unincorporated entity that converts to
25 a domestic business corporation shall be as follows:

26 (1) The conversion does not discharge any owner liability under the organic law of
27 the unincorporated entity to the extent any such owner liability arose before the effective time of the
28 articles of entity conversion.

29 (2) The interest holder shall not have owner liability under the organic law of the
30 unincorporated entity for any debt, obligation, or liability of the corporation that arises after the
31 effective time of the articles of entity conversion.

32 (3) The provisions of the organic law of the unincorporated entity shall continue to
33 apply to the collection or discharge of any owner liability preserved by RSA 293-A:9.55(d)(1), as if the
34 conversion had not occurred.

35 (4) The interest holder shall have whatever rights of contribution from other interest
36 holders are provided by the organic law of the unincorporated entity with respect to any owner
37 liability preserved by RSA 293-A:9.55(d)(1), as if the conversion had not occurred.

1 293-A:9.56 Abandonment of an Entity Conversion.

2 (a) Unless otherwise provided in a plan of entity conversion of a domestic business
3 corporation, after the plan has been adopted and approved as required by this subdivision, and at
4 any time before the entity conversion has become effective, it may be abandoned by the board of
5 directors without action by the shareholders.

6 (b) If an entity conversion is abandoned after articles of entity conversion or articles of
7 charter surrender have been filed with the secretary of state but before the entity conversion has
8 become effective, a statement that the entity conversion has been abandoned in accordance with this
9 section, signed by an officer or other duly authorized representative, shall be delivered to the
10 secretary of state for filing prior to the effective date of the entity conversion. Upon filing, the
11 statement shall take effect and the entity conversion shall be deemed abandoned and shall not
12 become effective.

13 Amendment of Articles of Incorporation and Bylaws

14 Part A

15 Amendment of Articles of Incorporation

16 293-A:10.01 Authority to Amend.

17 (a) A corporation may amend its articles of incorporation at any time to add or change a
18 provision that is required or permitted in the articles of incorporation as of the effective date of the
19 amendment or to delete a provision that is not required to be contained in the articles of incorporation.

20 (b) A shareholder of the corporation does not have a vested property right resulting from
21 any provision in the articles of incorporation, including provisions relating to management, control,
22 capital structure, dividend entitlement, or purpose or duration of the corporation.

23 293-A:10.02 Amendment Before Issuance of Shares. If a corporation has not yet issued shares,
24 its board of directors, or its incorporators if it has no board of directors, may adopt one or more
25 amendments to the corporation's articles of incorporation.

26 293-A:10.03 Amendment by Board of Directors and Shareholders. If a corporation has issued
27 shares, an amendment to the articles of incorporation shall be adopted in the following manner:

28 (a) The proposed amendment must be adopted by the board of directors.

29 (b) Except as provided in RSA 293-A:10.05, RSA 293-A:10.07, and RSA 293-A:10.08,
30 after adopting the proposed amendment the board of directors must submit the amendment to the
31 shareholders for their approval. The board of directors must also submit to the shareholders a
32 recommendation that the shareholders approve the amendment, unless (i) the board of directors
33 makes a determination that because of conflicts of interest or other special circumstances it should
34 not make such a recommendation, or (ii) RSA 293-A:8.26 applies. If (i) or (ii) applies, the board must
35 describe to the shareholders with reasonable specificity the basis for so proceeding.

36 (c) The board of directors may condition its recommendation of the amendment to the
37 shareholders on any basis.

(d) If the amendment is required to be approved by the shareholders, and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy of the proposed amendment.

(e) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (c), require a greater vote or a greater number of shares to be present, approval of the amendment shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in RSA 291-A:10.04(c), the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

293-A:10.04 Voting on Amendments by Voting Groups.

(a) If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment to the articles of incorporation if the amendment would:

(1) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(2) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(3) change the rights, preferences, or limitations of all or part of the shares of the class;

(4) change the shares of all or part of the class into a different number of shares of the same class;

(5) create a new class of shares having rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(6) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions that are prior or superior to the shares of the class;

(7) limit or deny an existing preemptive right of all or part of the shares of the class; or

(8) cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

1 (c) If a proposed amendment that entitles the holders of 2 or more classes or series of
2 shares to vote as separate voting groups under this section would affect those 2 or more classes or
3 series in the same or a substantially similar way, the holders of shares of all the classes or series so
4 affected must vote together as a single voting group on the proposed amendment, unless otherwise
5 provided in the articles of incorporation or required by the board of directors.

6 (d) A class or series of shares is entitled to the voting rights granted by this section
7 although the articles of incorporation provide that the shares are nonvoting shares.

8 293-A:10.05 Amendment by Board of Directors.

9 (a) Unless the articles of incorporation provide otherwise, a corporation's board of directors
10 may adopt amendments to the corporation's articles of incorporation without shareholder approval:

11 (1) to extend the duration of the corporation if it was incorporated at a time when
12 limited duration was required by law;

13 (2) to delete the names and addresses of the initial directors;

14 (3) to delete the name and address of the initial registered agent or registered office,
15 if a statement of change is on file with the secretary of state;

16 (4) if the corporation has only one class of shares outstanding:

17 (i) to change each issued and unissued authorized share of the class into a
18 greater number of whole shares of that class; or

19 (ii) to increase the number of authorized shares of the class to the extent
20 necessary to permit the issuance of shares as a share dividend;

21 (5) to change the corporate name by substituting the word "corporation,"
22 "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar
23 word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for
24 the name;

25 (6) to reflect a reduction in authorized shares, as a result of the operation of
26 RSA 293-A:6.31(b), when the corporation has acquired its own shares and the articles of
27 incorporation prohibit the reissue of the acquired shares;

28 (7) to delete a class of shares from the articles of incorporation, as a result of the
29 operation of RSA 293-A:6.31(b), when there are no remaining shares of the class because the
30 corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue
31 of the acquired shares; or

32 (8) to make any change expressly permitted by RSA 293-A:6.02(a) or (b) to be made
33 without shareholder approval.

34 293-A:10.06 Articles of Amendment.

35 (a) After an amendment to the articles of incorporation has been adopted and approved
36 in the manner required by this chapter and by the articles of incorporation, the corporation shall
37 deliver to the secretary of state, for filing, articles of amendment, which shall set forth:

- 1 (1) the name of the corporation;
- 2 (2) the text of each amendment adopted, or the information required by RSA 293-
3 A:1.20(j)(5);
- 4 (3) if an amendment provides for an exchange, reclassification, or cancellation of
5 issued shares, provisions for implementing the amendment if not contained in the amendment itself,
6 which may be made dependent upon facts objectively ascertainable outside the articles of
7 amendment in accordance with RSA 293-A:1.20(j)(5);
- 8 (4) the date of each amendment's adoption; and
- 9 (5) if an amendment:
- 10 (i) was adopted by the incorporators or board of directors without shareholder
11 approval, a statement that the amendment was duly approved by the incorporators or by the board of
12 directors, as the case may be, and that shareholder approval was not required;
- 13 (ii) required approval by the shareholders, a statement that the amendment was
14 duly approved by the shareholders in the manner required by this chapter and by the articles of
15 incorporation; or
- 16 (iii) is being filed pursuant to RSA 293-A:1.20(j)(5), a statement to that effect.
- 17 293-A:10.07 Restated Articles of Incorporation.
- 18 (a) A corporation's board of directors may restate its articles of incorporation at any time,
19 with or without shareholder approval, to consolidate all properly approved amendments into a single
20 document.
- 21 (b) If the restated articles include one or more new amendments that require shareholder
22 approval, the amendments must be adopted and approved as provided in RSA 293-A:10.03.
- 23 (c) A corporation that restates its articles of incorporation shall deliver to the secretary
24 of state for filing articles of restatement setting forth the name of the corporation and the text of the
25 restated articles of incorporation together with a certificate which states that the restated articles
26 consolidate all amendments into a single document and, if a new amendment is included in the
27 restated articles, which also includes the statements required under RSA 293-A:10.06.
- 28 (d) Duly adopted restated articles of incorporation supersede the original articles of
29 incorporation and all amendments thereto.
- 30 (e) The secretary of state may certify restated articles of incorporation as the articles of
31 incorporation currently in effect, without including the certificate information required by subsection (c).
- 32 293-A:10.08 Amendment Pursuant to Reorganization.
- 33 (a) A corporation's articles of incorporation may be amended without action by the board
34 of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of
35 competent jurisdiction under the authority of a law of the United States.
- 36 (b) The individual or individuals designated by the court shall deliver to the secretary of
37 state for filing articles of amendment setting forth:

- (1) the name of the corporation;
- (2) the text of each amendment approved by the court;
- (3) the date of the court's order or decree approving the articles of amendment;
- (4) the title of the reorganization proceeding in which the order or decree was entered; and
- (5) a statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

293-A:10.09 Effect of Amendment. An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Part B

Amendment of Bylaws

293-A:10.20 Amendment By Board Of Directors Or Shareholders.

(a) A corporation's shareholders may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws, unless:

(1) the articles of incorporation, RSA 293-A:10.21 or, if applicable, RSA 293-A:10.22 reserve that power exclusively to the shareholders in whole or part; or

(2) except as provided in RSA 293-A:2.06(d), the shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

293-A:10.21 Bylaw Increasing Quorum or Voting Requirement for Directors.

(a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(1) if originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides;

(2) if adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a) to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum

1 requirement and be adopted by the same vote required to take action under the quorum and voting
2 requirement then in effect or proposed to be adopted, whichever is greater.

3 293-A:10.22 Bylaw Provisions Relating to the Election of Directors.

4 (a) Unless the articles of incorporation (i) specifically prohibit the adoption of a bylaw
5 pursuant to this section, (ii) alter the vote specified in RSA 293-A:7.28(a), or (iii) provide for
6 cumulative voting, a public corporation may elect in its bylaws to be governed in the election of
7 directors as follows:

8 (1) each vote entitled to be cast may be voted for or against up to that number of
9 candidates that is equal to the number of directors to be elected, or a shareholder may indicate an
10 abstention, but without cumulating the votes;

11 (2) to be elected, a nominee must have received a plurality of the votes cast by
12 holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided
13 that a nominee who is elected but receives more votes against than for election shall serve as a
14 director for a term that shall terminate on the date on which an individual is selected by the board of
15 directors to fill the office held by such director, which selection shall be deemed to constitute the
16 filling of a vacancy by the board to which RSA 293-A:8.10 applies; and

17 (3) the board of directors may select any qualified individual to fill the office held by
18 a director who received more votes against than for election.

19 (b) Subsection (a) does not apply to an election of directors by a voting group if (i) at the
20 expiration of the time fixed under a provision requiring advance notification of director candidates,
21 or (ii) absent such a provision, at a time fixed by the board of directors which is not more than 14
22 days before notice is given of the meeting at which the election is to occur, there are more candidates
23 for election by the voting group than the number of directors to be elected, one or more of whom are
24 properly proposed by shareholders. An individual shall not be considered a candidate for purposes of
25 this subsection if the board of directors determines before the notice of meeting is given that such
26 individual's candidacy does not create a bona fide election contest.

27 (c) A bylaw electing to be governed by this section may be repealed:

28 (1) if originally adopted by the shareholders, only by the shareholders, unless the
29 bylaw otherwise provides; or

30 (2) if adopted by the board of directors, by the board of directors or the shareholders.

31 Merger and Share Exchange

32 293-A:11.01 Definitions. As used in this subdivision:

33 (a) "Merger" means a business combination pursuant to RSA 293-A:11.02.

34 (b) "Party to a merger" or "party to a share exchange" means any domestic or foreign
35 corporation or eligible entity that will:

36 (1) merge under a plan of merger;

37 (2) acquire shares or eligible interests of another corporation or an eligible entity in a
38 share exchange; or

(3) have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(c) “Share exchange” means a business combination pursuant to RSA 293-A:11.03.

(d) “Survivor” in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

293-A:11.02 Merger.

(a) One or more domestic business corporations may merge with one or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, or 2 or more foreign business corporations or domestic or foreign eligible entities may merge into a new domestic business corporation to be created in the merger in the manner provided in this subdivision.

(b) A foreign business corporation, or a foreign eligible entity, may be a party to a merger with a domestic business corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the foreign business corporation or eligible entity.

(c) If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in this subdivision and RSA 293-A:13.01 through RSA 293-A:13.40. For the purposes of applying this subdivision and RSA 293-A:13.01 through RSA 293-A:13.40:

(1) the eligible entity, its members or interest holders, eligible interests, and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares, and articles of incorporation, respectively and vice versa as the context may require; and

(2) if the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group shall be deemed to be the board of directors.

(d) The plan of merger must include:

(1) the name of each domestic or foreign business corporation or eligible entity that will merge and the name of the domestic or foreign business corporation or eligible entity that will be the survivor of the merger;

(2) the terms and conditions of the merger;

(3) the manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interests of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, other property, or any combination of the foregoing;

(4) the articles of incorporation of any domestic or foreign business or nonprofit corporation, or the organic documents of any domestic or foreign unincorporated entity, to be created by the merger, or if a new domestic or foreign business or nonprofit corporation or unincorporated

entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic documents; and

(5) any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic document of any such party.

(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with RSA 293-A:1.20(j).

(f) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

(1) the amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

(2) the articles of incorporation of any corporation, or the organic documents of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by RSA 293-A:10.05 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity; or

(3) any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(g) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not be diverted by a merger from the objects for which it was donated, granted or devised, unless and until the eligible entity obtains an order of the director of charitable trusts specifying the disposition of the property to the extent required by and pursuant to RSA 498:4-a, RSA 547:3-d, and RSA 564-B:4-413.

293-A:11.03 Share Exchange.

(a) Through a share exchange:

(1) a domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign eligible entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange, or

(2) all of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or eligible entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

1 (b) A foreign corporation or eligible entity may be a party to a share exchange only if the
2 share exchange is permitted by the law under which the corporation or eligible entity is organized or
3 by which it is governed.

4 (c) If the organic law of a domestic eligible entity does not provide procedures for the
5 approval of a share exchange, a plan of share exchange may be adopted and approved, and the share
6 exchange effectuated, in accordance with the procedures, if any, for a merger. If the organic law of a
7 domestic eligible entity does not provide procedures for the approval of either a share exchange or a
8 merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and
9 appraisal rights exercised, in accordance with the procedures in this subdivision and RSA 293-
10 A:13.01 through RSA 293-A:13.40. For the purposes of applying this subdivision and RSA 293-
11 A:13.01 through RSA 293-A:13.40:

12 (1) the eligible entity, its interest holders, interests and organic documents taken
13 together shall be deemed to be a domestic business corporation, shareholders, shares, and articles of
14 incorporation, respectively and vice versa as the context may require; and

15 (2) if the business and affairs of the eligible entity are managed by a group of persons
16 that is not identical to the interest holders, that group shall be deemed to be the board of directors.

17 (d) The plan of share exchange must include:

18 (1) the name of each corporation or eligible entity whose shares or interests will be
19 acquired and the name of the corporation or eligible entity that will acquire those shares or interests;

20 (2) the terms and conditions of the share exchange;

21 (3) the manner and basis of exchanging shares of a corporation or interests in an
22 eligible entity whose shares or interests will be acquired under the share exchange into shares or
23 other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash,
24 other property, or any combination of the foregoing; and

25 (4) any other provisions required by the laws under which any party to the share
26 exchange is organized or by the articles of incorporation or organic document of any such party.

27 (e) Terms of a plan of share exchange may be made dependent on facts objectively
28 ascertainable outside the plan in accordance with RSA 293-A:1.20(j).

29 (f) The plan of share exchange may also include a provision that the plan may be
30 amended prior to filing articles of share exchange, but if the shareholders of a domestic corporation
31 that is a party to the share exchange are required or permitted to vote on the plan, the plan must
32 provide that subsequent to approval of the plan by such shareholders the plan may not be amended
33 to change:

34 (1) the amount or kind of shares or other securities, interests, obligations, rights to
35 acquire shares, other securities or interests, cash, or other property to be issued by the corporation or
36 to be received under the plan by the shareholders of or owners of interests in any party to the share
37 exchange; or

1 (2) any of the other terms or conditions of the plan if the change would adversely
2 affect such shareholders in any material respect.

3 (g) RSA 293-A:11.03 does not limit the power of a domestic corporation to acquire shares
4 of another corporation or interests in another eligible entity in a transaction other than a share
5 exchange.

6 293-A:11.04 Action on a Plan of Merger or Share Exchange. In the case of a domestic
7 corporation that is a party to a merger or share exchange:

8 (a) The plan of merger or share exchange must be adopted by the board of directors.

9 (b) Except as provided in subsection (g) and in RSA 293-A:11.05, after adopting the plan
10 of merger or share exchange the board of directors must submit the plan to the shareholders for their
11 approval. The board of directors must also transmit to the shareholders a recommendation that the
12 shareholders approve the plan, unless: (i) the board of directors makes a determination that because
13 of conflicts of interest or other special circumstances it should not make such a recommendation; or
14 (ii) RSA 293-A:8.26 applies. If either (i) or (ii) applies, the board of directors must transmit to the
15 shareholders the basis for that determination.

16 (c) The board of directors may condition its submission of the plan of merger or share
17 exchange to the shareholders on any basis.

18 (d) If the plan of merger or share exchange is required to be approved by the
19 shareholders, and if the approval is to be given at a meeting, the corporation must notify each
20 shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be
21 submitted for approval. The notice must state that the purpose, or one of the purposes, of the
22 meeting is to consider the plan and must contain or be accompanied by a copy or summary of the
23 plan. If the corporation is to be merged into an existing corporation or eligible entity, the notice shall
24 also include or be accompanied by a copy or summary of the articles of incorporation or
25 organizational documents of that corporation or eligible entity. If the corporation is to be merged
26 into a corporation or eligible entity that is to be created pursuant to the merger, the notice shall
27 include or be accompanied by a copy or a summary of the articles of incorporation or organizational
28 documents of the new corporation or eligible entity.

29 (e) Unless the articles of incorporation, or the board of directors acting pursuant to
30 subsection (c), requires a greater vote or a greater number of votes to be present, approval of the plan
31 of merger or share exchange requires the approval of the shareholders at a meeting at which a
32 quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any
33 class or series of shares is entitled to vote as a separate group on the plan of merger or share
34 exchange, the approval of each such separate voting group at a meeting at which a quorum of the
35 voting group consisting of at least a majority of the votes entitled to be cast on the merger or share
36 exchange by that voting group is present.

37 (f) Subject to subsection (g), separate voting by voting groups is required:

- 1 (1) on a plan of merger, by each class or series of shares that:
- 2 (i) are to be converted under the plan of merger into other securities, interests,
- 3 obligations, rights to acquire shares, other securities or interests, cash, other property, or any
- 4 combination of the foregoing; or
- 5 (ii) are entitled to vote as a separate group on a provision in the plan that
- 6 constitutes a proposed amendment to articles of incorporation, of a surviving corporation, that
- 7 requires require action by separate voting groups under RSA 293-A:10.04;
- 8 (2) on a plan of share exchange, by each class or series of shares included in the
- 9 exchange, with each class or series constituting a separate voting group; and
- 10 (3) on a plan of merger or share exchange, if the voting group is entitled under the
- 11 articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.
- 12 (g) The articles of incorporation may expressly limit or eliminate the separate voting
- 13 rights provided in subsections (f)(1)(i) and (f)(2) as to any class or series of shares, except for a
- 14 transaction that (A) includes what is or would be, if the corporation were the surviving corporation,
- 15 an amendment subject to subsection (f)(1)(ii), and (B) will effect no significant change in the assets of
- 16 the resulting entity, including all parents and subsidiaries on a consolidated basis.
- 17 (h) Unless the articles of incorporation otherwise provide, approval by the corporation's
- 18 shareholders of a plan of merger or share exchange is not required if:
- 19 (1) the corporation will survive the merger or is the acquiring corporation in a share
- 20 exchange;
- 21 (2) except for amendments permitted by RSA 293-A:10.05, its articles of
- 22 incorporation will not be changed; and
- 23 (3) each shareholder of the corporation whose shares were outstanding immediately
- 24 before the effective date of the merger or share exchange will hold the same number of shares, with
- 25 identical preferences, limitations, and relative rights, immediately after the effective date of change.
- 26 (i) If as a result of a merger or share exchange one or more shareholders of a domestic
- 27 corporation would become subject to owner liability for the debts, obligations, or liabilities of any
- 28 other person or entity, approval of the plan of merger or share exchange shall require the execution,
- 29 by each such shareholder, of a separate written consent to become subject to such owner liability.
- 30 293-A:11.05 Merger Between Parent and Subsidiary or Between Subsidiaries.
- 31 (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary
- 32 corporation that carry at least 90 percent of the voting power of each class and series of the outstanding
- 33 shares of the subsidiary that have voting power may merge the subsidiary into itself or into another
- 34 such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or
- 35 shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise
- 36 provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors
- 37 or shareholders is required by the laws under which the subsidiary is organized.

1 (b) If under subsection (a) approval of a merger by the subsidiary's shareholders is not
2 required, the parent corporation shall, within 10 days after the effective date of the merger, notify
3 each of the subsidiary's shareholders that the merger has become effective.

4 (c) Except as provided in subsections (a) and (b), a merger between a parent and a
5 subsidiary shall be governed by the provisions of RSA 293-A:11.01 through RSA 293-A:11.08
6 applicable to mergers generally.

7 293-A:11.06 Articles of Merger or Share Exchange.

8 (a) After a plan of merger or share exchange has been adopted and approved as required
9 by this chapter, articles of merger or share exchange shall be signed on behalf of each party to the
10 merger or share exchange by any officer or other duly authorized representative. The articles shall
11 set forth:

12 (1) the names of the parties to the merger or share exchange;

13 (2) if the articles of incorporation of the survivor of a merger are amended, or if a
14 new corporation is created as a result of a merger, the amendments to the survivor's articles of
15 incorporation or the articles of incorporation of the new corporation;

16 (3) if the plan of merger or share exchange required approval by the shareholders of a
17 domestic corporation that was a party to the merger or share exchange, a statement that the plan was
18 duly approved by the shareholders and, if voting by any separate voting group was required, by each such
19 separate voting group, in the manner required by this chapter and the articles of incorporation;

20 (4) if the plan of merger or share exchange did not require approval by the
21 shareholders of a domestic corporation that was a party to the merger or share exchange, a
22 statement to that effect; and

23 (5) as to each foreign corporation or eligible entity that was a party to the merger or
24 share exchange, a statement that the participation of the foreign corporation or eligible entity was
25 duly authorized as required by the organic law of the corporation or eligible entity.

26 (b) Articles of merger or share exchange shall be delivered to the secretary of state for
27 filing by the survivor of the merger or the acquiring corporation in a share exchange, and shall take
28 effect at the effective time provided in RSA 293-A:1.23. Articles of merger or share exchange filed
29 under this section may be combined with any filing required under the organic law of any domestic
30 eligible entity involved in the transaction if the combined filing satisfies the requirements of both
31 this section and the other organic law.

32 293-A:11.07 Effect of Merger or Share Exchange.

33 (a) When a merger becomes effective:

34 (1) the corporation or eligible entity that is designated in the plan of merger as the
35 survivor continues or comes into existence, as the case may be;

36 (2) the separate existence of every corporation or eligible entity that is merged into
37 the survivor ceases;

1 (3) all title to real estate and other property owned by, and every contract right
2 possessed by, each corporation or eligible entity that merges into the survivor is vested in the
3 survivor without reversion or impairment;

4 (4) all liabilities of each corporation or eligible entity that is merged into the survivor
5 are vested in the survivor;

6 (5) the name of the survivor may, but need not be, substituted in any pending
7 proceeding for the name of any party to the merger whose separate existence ceased in the merger;

8 (6) the articles of incorporation or organic documents of the survivor are amended to
9 the extent provided in the plan of merger;

10 (7) the articles of incorporation or organic documents of a survivor that is created by
11 the merger become effective; and

12 (8) the shares of each corporation that is a party to the merger, and the interests in
13 an eligible entity that is a party to a merger, that are to be converted under the plan of merger into
14 shares, eligible interests, obligations, rights to acquire securities, other securities, or eligible
15 interests, cash, other property, or any combination of the foregoing, are converted, and the former
16 holders of such shares or eligible interests are entitled only to the rights provided to them in the plan
17 of merger or to any rights they may have under RSA 293-A:13.01 through RSA 293-A:13.40 or the
18 organic law of the eligible entity.

19 (b) When a share exchange becomes effective, the shares of each domestic corporation
20 that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares
21 or other securities, cash, other property, or any combination of the foregoing, are entitled only to the
22 rights provided to them in the plan of share exchange or to any rights they may have under RSA 293-
23 A:13.01 through RSA 293-A:13.40.

24 (c) A person who becomes subject to owner liability for some or all of the debts, obligations, or
25 liabilities of any entity as a result of a merger or share exchange shall have owner liability only to the
26 extent provided in the organic law of the entity and only for those debts, obligations, and liabilities that
27 arise after the effective time of the articles of merger or share exchange.

28 (d) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity,
29 that is the survivor of the merger is deemed to:

30 (1) appoint the secretary of state as its agent for service of process in a proceeding to
31 enforce the rights of shareholders of each domestic corporation that is a party to the merger who
32 exercise appraisal rights, and

33 (2) agree that it will promptly pay the amount, if any, to which such shareholders
34 are entitled under RSA 293-A:13.01 through RSA 293-A:13.40.

35 (e) The effect of a merger or share exchange on the owner liability of a person who had
36 owner liability for some or all of the debts, obligations, or liabilities of a party to the merger or share
37 exchange shall be as follows:

1 (1) The merger or share exchange does not discharge any owner liability under the
2 organic law of the entity in which the person was a shareholder or interest holder to the extent any
3 such owner liability arose before the effective time of the articles of merger or share exchange.

4 (2) The person shall not have owner liability under the organic law of the entity in
5 which the person was a shareholder or interest holder prior to the merger or share exchange for any
6 debt, obligation, or liability that arises after the effective time of the articles of merger or share
7 exchange.

8 (3) The provisions of the organic law of any entity for which the person had owner
9 liability before the merger or share exchange shall continue to apply to the collection or discharge of
10 any owner liability preserved by subparagraph (1), as if the merger or share exchange had not
11 occurred.

12 (4) The person shall have whatever rights of contribution from other persons are
13 provided by the organic law of the entity for which the person had owner liability with respect to any
14 owner liability preserved by subparagraph (1), as if the merger or share exchange had not occurred.

15 293-A:11.08 Abandonment of a Merger or Share Exchange.

16 (a) Unless otherwise provided in a plan of merger or share exchange or in the laws under
17 which a foreign business corporation or a domestic or foreign eligible entity that is a party to a merger
18 or a share exchange is organized or by which it is governed, after the plan has been adopted and
19 approved as required by this chapter, and at any time before the merger or share exchange has become
20 effective, it may be abandoned by a domestic business corporation that is a party thereto without action
21 by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange
22 or, if no such procedures are set forth in the plan, in the manner determined by the board of directors,
23 subject to any contractual rights of other parties to the merger or share exchange.

24 (b) If a merger or share exchange is abandoned under subsection (a) after articles of
25 merger or share exchange have been filed with the secretary of state but before the merger or share
26 exchange has become effective, a statement that the merger or share exchange has been abandoned
27 in accordance with this section, signed on behalf of a party to the merger or share exchange by an
28 officer or other duly authorized representative, shall be delivered to the secretary of state for filing
29 prior to the effective date of the merger or share exchange. Upon filing, the statement shall take
30 effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

31 Sale of Assets

32 293-A:12.01 Disposition of Assets Not Requiring Shareholder Approval.

33 (a) No approval of the shareholders of a corporation is required, unless the articles of
34 incorporation otherwise provide, for a corporation, upon the terms and conditions and for the
35 consideration determined by the board of directors:

36 (1) to sell, lease, exchange, or otherwise dispose of any or all of the corporation's
37 assets in the usual and regular course of business;

1 (2) to mortgage, pledge, dedicate to the repayment of indebtedness (whether with or
2 without recourse), or otherwise encumber any or all of the corporation's assets, whether or not in the
3 usual and regular course of business;

4 (3) to transfer any or all of the corporation's assets to one or more corporations or
5 other entities all of the shares or interests of which are owned by the corporation; or

6 (4) to distribute assets pro rata to the holders of one or more classes or series of the
7 corporation's shares.

8 293-A:12.02 Shareholder Approval of Certain Dispositions.

9 (a) A sale, lease, exchange, or other disposition of assets, other than a disposition
10 described in RSA 293-A:12.01, requires approval of the corporation's shareholders if the disposition
11 would leave the corporation without a significant continuing business activity. If a corporation
12 retains a business activity that represented at least 25 percent of total assets at the end of the most
13 recently completed fiscal year, and 25 percent of either income from continuing operations before
14 taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and
15 its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained
16 a significant continuing business activity.

17 (b) A disposition that requires approval of the shareholders under subsection (a) shall be
18 initiated by a resolution by the board of directors authorizing the disposition. After adoption of such
19 a resolution, the board of directors shall submit the proposed disposition to the shareholders for their
20 approval. The board of directors shall also transmit to the shareholders a recommendation that the
21 shareholders approve the proposed disposition, unless (i) the board of directors makes a
22 determination that because of conflicts of interest or other special circumstances it should not make
23 such a recommendation, or (ii) RSA 293-A:8.26 applies. If either (i) or (ii) applies, the board must
24 transmit to the shareholders the basis for so proceeding.

25 (c) The board of directors may condition its submission of a disposition to the
26 shareholders under subsection (b) on any basis.

27 (d) If a disposition is required to be approved by the shareholders under subsection (a),
28 and if the approval is to be given at a meeting, the corporation shall notify each shareholder,
29 whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be
30 submitted for approval. The notice shall state that the purpose, or one of the purposes, of the
31 meeting is to consider the disposition and shall contain a description of the disposition, including the
32 terms and conditions thereof and the consideration to be received by the corporation.

33 (e) Unless the articles of incorporation or the board of directors acting pursuant to
34 subsection (c) requires a greater vote, or a greater number of votes to be present, the approval of a
35 disposition by the shareholders shall require the approval of the shareholders at a meeting at which
36 a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

1 (f) After a disposition has been approved by the shareholders under subsection (b), and
2 at any time before the disposition has been consummated, it may be abandoned by the corporation
3 without action by the shareholders, subject to any contractual rights of other parties to the
4 disposition.

5 (g) A disposition of assets in the course of dissolution under RSA 293-A:14.01 through
6 RSA 293-A:14.34 is not governed by this subdivision.

7 (h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets
8 of the parent corporation for the purposes of this section.

9 Dissenters' Rights

10 Part A

11 Right to Appraisal and Payment for Shares

12 293-A:13.01 Definitions.

13 (a) In this subdivision:

14 (1) "Affiliate" means a person that directly or indirectly through one or more
15 intermediaries controls, is controlled by, or is under common control with another person or is a
16 senior executive thereof. For purposes of RSA 293-A:13.02(b)(4), a person is deemed to be an affiliate
17 of its senior executives.

18 (2) "Beneficial shareholder" means a person who is the beneficial owner of shares
19 held in a voting trust or by a nominee on the beneficial owner's behalf.

20 (3) "Corporation" means the issuer of the shares held by a shareholder demanding
21 appraisal and, for matters covered in RSA 293-A:13.22 through RSA 293-A:13.31, includes the
22 surviving entity in a merger.

23 (4) "Fair value" means the value of the corporation's shares determined:

24 (i) immediately before the effectuation of the corporate action to which the
25 shareholder objects;

26 (ii) using customary and current valuation concepts and techniques generally
27 employed for similar businesses in the context of the transaction requiring appraisal; and

28 (iii) without discounting for lack of marketability or minority status except, if
29 appropriate, for amendments to the articles pursuant to RSA 293-A:13.02(a)(5).

30 (5) "Interest" means interest from the effective date of the corporate action until the
31 date of payment, at the rate of interest on judgments in this state on the effective date of the
32 corporate action.

33 (6) "Interested transaction" means a corporate action described in RSA 293-A:13.02(a),
34 other than a merger pursuant to RSA 293-A:11.05, involving an interested person in which any of the
35 shares or assets of the corporation are being acquired or converted.

36 (7) "Interested person" means a person, or an affiliate of a person, who at any time during
37 the one-year period immediately preceding approval by the board of directors of the corporate action:

1 (i) was the beneficial owner of 20 percent or more of the voting power of the
2 corporation, other than as owner of excluded shares;

3 (ii) had the power, contractually or otherwise, other than as owner of excluded
4 shares, to cause the appointment or election of 25 percent or more of the directors to the board of
5 directors of the corporation; or

6 (iii) was a senior executive or director of the corporation or a senior executive of
7 any affiliate thereof, and that senior executive or director will receive, as a result of the corporate
8 action, a financial benefit not generally available to other shareholders as such, other than:

9 (A) employment, consulting, retirement, or similar benefits established
10 separately and not as part of or in contemplation of the corporate action; or

11 (B) employment, consulting, retirement, or similar benefits established in
12 contemplation of, or as part of, the corporate action that are not more favorable than those existing
13 before the corporate action or, if more favorable, that have been approved on behalf of the
14 corporation in the same manner as is provided in RSA 293-A:8.62; or

15 (C) in the case of a director of the corporation who will, in the corporate
16 action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights
17 and benefits as a director that are provided on the same basis as those afforded by the acquiring
18 entity generally to other directors of such entity or such affiliate.

19 (8) “Beneficial owner” means any person who, directly or indirectly, through any
20 contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to
21 vote, or to direct the voting of, shares; except that a member of a national securities exchange is not
22 deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person
23 solely because the member is the record holder of the securities if the member is precluded by the rules
24 of the exchange from voting without instruction on contested matters or matters that may affect
25 substantially the rights or privileges of the holders of the securities to be voted. When 2 or more
26 persons agree to act together for the purpose of voting their shares of the corporation, each member of
27 the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the
28 agreement, of all voting shares of the corporation beneficially owned by any member of the group.

29 (9) “Excluded shares” means shares acquired pursuant to an offer for all shares
30 having voting power if the offer was made within one year prior to the corporate action for
31 consideration of the same kind and of a value equal to or less than that paid in connection with the
32 corporate action.

33 (10) “Preferred shares” means a class or series of shares whose holders have
34 preference over any other class or series with respect to distributions.

35 (11) “Record shareholder” means the person in whose name shares are registered in
36 the records of the corporation or the beneficial owner of shares to the extent of the rights granted by
37 a nominee certificate on file with the corporation.

1 (12) “Senior executive” means the chief executive officer, chief operating officer, chief
2 financial officer, and anyone in charge of a principal business unit or function.

3 (13) “Shareholder” means both a record shareholder and a beneficial shareholder.

4 293-A:13.02 Right to Appraisal.

5 (a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value
6 of that shareholder’s shares, in the event of any of the following corporate actions:

7 (1) consummation of a merger to which the corporation is a party (i) if shareholder
8 approval is required for the merger by RSA 293-A:11.04, except that appraisal rights shall not be
9 available to any shareholder of the corporation with respect to shares of any class or series that
10 remain outstanding after consummation of the merger, or (ii) if the corporation is a subsidiary and
11 the merger is governed by RSA 293-A:11.05;

12 (2) consummation of a share exchange to which the corporation is a party as the
13 corporation whose shares will be acquired, except that appraisal rights shall not be available to any
14 shareholder of the corporation with respect to any class or series of shares of the corporation that is
15 not exchanged;

16 (3) consummation of a disposition of assets pursuant to RSA 293-A:12.02, except that
17 appraisal rights shall not be available to any shareholder of the corporation with respect to shares of
18 any class or series if (i) under the terms of the corporate action approved by the shareholders there is to
19 be distributed to shareholders in cash its net assets, in excess of a reasonable amount reserved to meet
20 claims of the type described in RSA 293-A:14.06 and RSA 293-A:14.07, (A) within one year after the
21 shareholders’ approval of the action and (B) in accordance with their respective interests determined at
22 the time of distribution, and (ii) the disposition of assets is not an interested transaction;

23 (4) an amendment of the articles of incorporation with respect to a class or series of
24 shares that reduces the number of shares of a class or series owned by the shareholder to a fraction
25 of a share if the corporation has the obligation or right to repurchase the fractional share so created;

26 (5) any other amendment to the articles of incorporation, or any other merger, share
27 exchange or disposition of assets, to the extent provided by the articles of incorporation, bylaws, or a
28 resolution of the board of directors;

29 (6) consummation of a domestication if the shareholder does not receive shares in the
30 foreign corporation resulting from the domestication that have terms as favorable to the shareholder
31 in all material respects, and represent at least the same percentage interest of the total voting rights
32 of the outstanding shares of the corporation, as the shares held by the shareholder before the
33 domestication;

34 (7) consummation of a conversion of the corporation to nonprofit status pursuant to
35 RSA 293-A:9.30 through RSA 293-A:9.35; or

36 (8) consummation of a conversion of the corporation to an unincorporated entity
37 pursuant to RSA 293-A:9.50 through RSA 293-A:9.56.

(b) Notwithstanding RSA 293-A:13.02(a), the availability of appraisal rights under RSA 293-A:13.02(a)(1), (2), (3), (4), (6), and (8) shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(i) a covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, as amended; or

(ii) traded in an organized market and has at least 1,000 shareholders and a market value of at least \$20 million (exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than 10 percent of such shares); or

(iii) issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.

(2) The applicability of RSA 293-A:13.02(b)(1) shall be determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) the day before the effective date of such corporate action if there is no meeting of shareholders.

(3) RSA 293-A:13.02(b)(1) shall not be applicable and appraisal rights shall be available pursuant to RSA 293-A:13.02(a) for the holders of any class or series of shares (i) who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in RSA 293-A:13.02(b)(1) at the time the corporate action becomes effective, or (ii) in the case of the consummation of a disposition of assets pursuant to RSA 293-A:12.02, unless such cash, shares or proprietary interests are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders, as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in RSA 293-A:14.06 and RSA 293-A:14.07, (A) within one year after the shareholders' approval of the action, and (B) in accordance with their respective interests determined at the time of the distribution.

(4) RSA 293-A:13.02(b)(1) shall not be applicable and appraisal rights shall be available pursuant to RSA 293-A:13.02(a) for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of RSA 293-A:13.02, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, except that (i) no such limitation or elimination shall be effective if the class or series does not have the right to vote separately as a voting group (alone or as part of a

group) on the action or if the action is a nonprofit conversion under RSA 293-A:9.30 through RSA 293-A:9.35 or a conversion to an unincorporated entity under RSA 293-A:9.50 through RSA 293-A:9.56, or a merger having a similar effect, and (ii) any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

293-A:13.03 Assertion of Rights by Nominees and Beneficial Owners.

(a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(1) submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in RSA 293-A:13.22(b)(2)(ii); and

(2) does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

Part B

Procedure For Exercise Of Appraisal Rights

293-A:13.20 Notice of Appraisal Rights.

(a) Where any corporate action specified in RSA 293-A:13.02(a) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not or may be entitled to assert appraisal rights under this subdivision. If the corporation concludes that appraisal rights are or may be available, a copy of this subdivision must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to RSA 293-A:11.05, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within 10 days after the corporate action became effective and include the materials described in RSA 293-A:13.22.

1 (c) Where any corporate action specified in RSA 293-A:13.02(a) is to be approved by
2 written consent of the shareholders pursuant to RSA 293-A:7.04:

3 (1) written notice that appraisal rights are, are not or may be available must be sent
4 to each record shareholder from whom a consent is solicited at the time consent of such shareholder
5 is first solicited and, if the corporation has concluded that appraisal rights are or may be available,
6 must be accompanied by a copy of this subdivision; and

7 (2) written notice that appraisal rights are, are not or may be available must be
8 delivered together with the notice to non-consenting and nonvoting shareholders required by RSA
9 293-A:7.04(e) and (f), may include the materials described in RSA 293-A:13.22 and, if the corporation
10 has concluded that appraisal rights are or may be available, must be accompanied by a copy of this
11 subdivision.

12 (d) Where corporate action described in RSA 293-A:13.02(a) is proposed, or a merger
13 pursuant to RSA 293-A:11.05 is effected, the notice referred to in RSA 293-A:13.20(a) or (c), if the
14 corporation concludes that appraisal rights are or may be available, and in RSA 293-A:13.20(b) shall
15 be accompanied by:

16 (1) the annual financial statements specified in RSA 293-A:16.20(a) of the
17 corporation that issued the shares that may be subject to appraisal, which shall be as of a date
18 ending not more than 16 months before the date of the notice and shall comply with RSA 293-
19 A:16.20(b); provided that, if such annual financial statements are not reasonably available, the
20 corporation shall provide reasonably equivalent financial information; and

21 (2) the latest available quarterly financial statements of such corporation, if any.

22 (e) The right to receive the information described in RSA 293-A:13.20(d) may be waived
23 in writing by a shareholder before or after the corporate action.

24 **293-A:13.21 Notice of Intent to Demand Payment and Consequences of Voting or Consenting.**

25 (a) If a corporate action specified in RSA 293-A:13.02(a) is submitted to a vote at a
26 shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class
27 or series of shares:

28 (1) must deliver to the corporation, before the vote is taken, written notice of the
29 shareholder's intent to demand payment if the proposed action is effectuated; and

30 (2) must not vote, or cause or permit to be voted, any shares of such class or series in
31 favor of the proposed action.

32 (b) If a corporate action specified in RSA 293-A:13.02(a) is to be approved by less than
33 unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any
34 class or series of shares must not sign a consent in favor of the proposed action with respect to that
35 class or series of shares.

36 (c) A shareholder who fails to satisfy the requirements of RSA 293-A:13.21(a) or (b) is not
37 entitled to payment under this subdivision.

1 293-A:13.22 Appraisal Notice and Form.

2 (a) If a corporate action requiring appraisal rights under RSA 293-A:13.02(a) becomes
3 effective, the corporation must send a written appraisal notice and the form required by RSA 293-
4 A:13.02(b)(1) to all shareholders who satisfy the requirements of RSA 293-A:13.21(a) or RSA 293-
5 A:13.21(b). In the case of a merger under RSA 293-A:11.05, the parent must deliver an appraisal
6 notice and form to all record shareholders who may be entitled to assert appraisal rights.

7 (b) The appraisal notice must be delivered no earlier than the date the corporate action
8 specified in RSA 293-A:13.02(a) became effective, and no later than 10 days after such date, and
9 must:

10 (1) supply a form that (i) specifies the first date of any announcement to
11 shareholders made prior to the date the corporate action became effective of the principal terms of
12 the proposed corporate action, and (ii) if such announcement was made, requires the shareholder
13 asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal
14 rights are asserted was acquired before that date, and (iii) requires the shareholder asserting
15 appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

16 (2) state:

17 (i) where the form must be sent and where certificates for certificated shares
18 must be deposited and the date by which those certificates must be deposited, which date may not be
19 earlier than the date for receiving the required form under RSA 293-A:13.22(b)(2)(ii);

20 (ii) a date by which the corporation must receive the form, which date may not be
21 fewer than 40 nor more than 60 days after the date the RSA 293-A:13.22(a) appraisal notice is sent,
22 and state that the shareholder shall have waived the right to demand appraisal with respect to the
23 shares unless the form is received by the corporation by such specified date;

24 (iii) the corporation's estimate of the fair value of the shares;

25 (iv) that, if requested in writing, the corporation will provide, to the shareholder
26 so requesting, within 10 days after the date specified in RSA 293-A:13.22(b)(2)(ii) the number of
27 shareholders who return the forms by the specified date and the total number of shares owned by
28 them; and

29 (v) the date by which the notice to withdraw under RSA 293-A:13.23 must be
30 received, which date must be within 20 days after the date specified in RSA 293-A:13.22(b)(2)(ii); and

31 (3) be accompanied by a copy of this subdivision.

32 293-A:13.23 Perfection of Rights; Right to Withdraw.

33 (a) A shareholder who receives notice pursuant to RSA 293-A:13.22 and who wishes to
34 exercise appraisal rights must sign and return the form sent by the corporation and, in the case of
35 certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice
36 by the date referred to in the notice pursuant to RSA 293-A:13.22(b)(2)(ii). In addition, if applicable,
37 the shareholder must certify on the form whether the beneficial owner of such shares acquired

beneficial ownership of the shares before the date required to be set forth in the notice pursuant to RSA 293-A:13.22(b)(1). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under RSA 293-A:13.25. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to RSA 293-A:13.23(b).

(b) A shareholder who has complied with RSA 293-A:13.23(a) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to RSA 293-A:13.22(b)(2)(v). A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in RSA 293-A:13.22(b), shall not be entitled to payment under this subdivision.

293-A:13.24 Payment.

(a) Except as provided in RSA 293-A:13.25, within 30 days after the form required by RSA 293-A:13.22(b)(2)(ii) is due, the corporation shall pay in cash to those shareholders who complied with RSA 293-A:13.23(a) the amount the corporation estimates to be the fair value of their shares, plus interest.

(b) The payment to each shareholder pursuant to RSA 293-A:13.24(a) must be accompanied by:

(1)(i) the annual financial statements specified in RSA 293-A:16.20(a) of the corporation that issued the shares to be appraised, which shall be of a date ending not more than 16 months before the date of payment and shall comply with RSA 293-A:16.20(b); provided that, if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information, and (ii) the latest available quarterly financial statements of such corporation, if any;

(2) a statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to RSA 293-A:13.22(b)(2)(iii);

(3) a statement that shareholders described in RSA 293-A:13.24(a) have the right to demand further payment under RSA 293-A:13.26 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this subdivision.

293-A:13.25 After-Acquired Shares.

(a) A corporation may elect to withhold payment required by RSA 293-A:13.24 from any shareholder who was required to, but did not certify that beneficial ownership of all of the

shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to RSA 293-A:13.22(b)(1).

(b) If the corporation elected to withhold payment under RSA 293-A:13.25(a), it must, within 30 days after the form required by RSA 293-A:13.22(b)(2)(ii) is due, notify all shareholders who are described in RSA 293-A:13.25(a):

(1) of the information required by RSA 293-A:13.24(b)(1);

(2) of the corporation's estimate of fair value pursuant to RSA 293-A:13.24(b)(2);

(3) that they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under RSA 293-A:13.26;

(4) that those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer; and

(5) that those shareholders who do not satisfy the requirements for demanding appraisal under RSA 293-A:13.26 shall be deemed to have accepted the corporation's offer.

(c) Within 10 days after receiving the shareholder's acceptance pursuant to RSA 293-A:13.25(b), the corporation must pay in cash the amount it offered under RSA 293-A:13.25(b)(2) to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within 40 days after sending the notice described in RSA 293-A:13.25(b), the corporation must pay in cash the amount it offered to pay under RSA 293-A:13.25(b)(2) to each shareholder described in RSA 293-A:13.25(b)(5).

293-A:13.26 Procedure if Shareholder Dissatisfied with Payment or Offer.

(a) A shareholder paid pursuant to RSA 293-A:13.24 who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest (less any payment under RSA 293-A:13.24). A shareholder offered payment under RSA 293-A:13.25 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(b) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under RSA 293-A:13.26(a) within 30 days after receiving the corporation's payment or offer of payment under RSA 293-A:13.24 or RSA 293-A:13.25, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

Part C

Judicial Appraisal of Shares

293-A:13.30 Court Action.

(a) If a shareholder makes demand for payment under RSA 293-A:13.26 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment

1 demand and petition the court to determine the fair value of the shares and accrued interest. If the
2 corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each
3 shareholder the amount the shareholder demanded pursuant to RSA 293-A:13.26 plus interest.

4 (b) The corporation shall commence the proceeding in the appropriate court of the county
5 where the corporation's principal office (or, if none, its registered office) in this state is located. If the
6 corporation is a foreign corporation without a registered office in this state, it shall commence the
7 proceeding in the county in this state where the principal office or registered office of the domestic
8 corporation merged with the foreign corporation was located at the time of the transaction.

9 (c) The corporation shall make all shareholders (whether or not residents of this state)
10 whose demands remain unsettled parties to the proceeding as in an action against their shares, and
11 all parties must be served with a copy of the petition. Nonresidents may be served by registered or
12 certified mail or by publication as provided by law.

13 (d) The jurisdiction of the court in which the proceeding is commenced under RSA 293-
14 A:13.30(b) is plenary and exclusive. The court may appoint one or more persons as appraisers to
15 receive evidence and recommend a decision on the question of fair value. The appraisers shall have
16 the powers described in the order appointing them, or in any amendment to it. The shareholders
17 demanding appraisal rights are entitled to the same discovery rights as parties in other civil
18 proceedings. There shall be no right to a jury trial.

19 (e) Each shareholder made a party to the proceeding is entitled to judgment (i) for the
20 amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest,
21 exceeds the amount paid by the corporation to the shareholder for such shares or (ii) for the fair
22 value, plus interest, of the shareholder's shares for which the corporation elected to withhold
23 payment under RSA 293-A:13.25.

24 **293-A:13.31 Court Costs and Expenses.**

25 (a) The court in an appraisal proceeding commenced under RSA 293-A:13.30 shall
26 determine all court costs of the proceeding, including the reasonable compensation and expenses of
27 appraisers appointed by the court. The court shall assess the court costs against the corporation,
28 except that the court may assess court costs against all or some of the shareholders demanding
29 appraisal, in amounts which the court finds equitable, to the extent the court finds such
30 shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by
31 this subdivision.

32 (b) The court in an appraisal proceeding may also assess the expenses of the respective
33 parties in amounts the court finds equitable:

34 (1) against the corporation and in favor of any or all shareholders demanding
35 appraisal if the court finds the corporation did not substantially comply with the requirements of
36 RSA 293-A:13.20, RSA 293-A:13.22, RSA 293-A:13.24, or RSA 293-A:13.25; or

(2) against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds the party against whom expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subdivision.

(c) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that such expenses should not be assessed against the corporation, the court may direct that such expenses be paid out of the amounts awarded the shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to RSA 293-A:13.24, RSA 293-A:13.25, or RSA 293-A:13.26, the shareholder may sue directly for the amount owed, and to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

Part D

Miscellaneous

293-A:13.40 Other Remedies Limited.

(a) The legality of a proposed or completed corporate action described in RSA 293-A:13.02(a) may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(b) RSA 293-A:13.40(a) does not apply to a corporate action that:

(1) was not authorized and approved in accordance with the applicable provisions of:

(i) subdivisions 9, 10, 11, or 12 of RSA 293-A,

(ii) the articles of incorporation or bylaws, or

(iii) the resolution of the board of directors authorizing the corporate action;

(2) was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(3) is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in RSA 293-A:8.62 and has been approved by the shareholders in the same manner as is provided in RSA 293-A:8.63 as if the interested transaction were a director's conflicting interest transaction; or

(4) is approved by less than unanimous consent of the voting shareholders pursuant to RSA 293-A:7.04 if:

(i) the challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected; and

(ii) the proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

Dissolution

Part A

Voluntary Dissolution

293-A:14.01 Dissolution by Incorporators or Initial Directors.

(a) A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

- (1) the name of the corporation;
- (2) the date of its incorporation;
- (3) either (i) that none of the corporation's shares has been issued or (ii) that the corporation has not commenced business;
- (4) that no debt of the corporation remains unpaid;
- (5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (6) that a majority of the incorporators or initial directors authorized the dissolution.

293-A:14.02 Dissolution by Board of Directors and Shareholders.

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RSA 293-A:8.26 applies. If (i) or (ii) applies, it must communicate to the shareholders the basis for so proceeding; and

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in RSA 293-A:14.02(b)(5).

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors acting pursuant to RSA 293-A:14.02(b)(3) require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

1 293-A:14.03 Articles of Dissolution.

2 (a) At any time after dissolution is authorized, the corporation may dissolve by
3 delivering to the secretary of state for filing articles of dissolution setting forth:

4 (1) the name of the corporation;

5 (2) the date dissolution was authorized;

6 (3) if dissolution was approved by the shareholders, a statement that the proposal to
7 dissolve was duly approved by the shareholders in the manner required by this chapter and by the
8 articles of incorporation; and

9 (4) a certificate of mailing of a copy of the articles of dissolution to the department of
10 revenue.

11 (b) A corporation is dissolved upon the effective date of its articles of dissolution, as
12 specified therein.

13 (c) For purposes of this subdivision, “dissolved corporation” means a corporation whose
14 articles of dissolution have become effective and includes a successor entity to which the remaining
15 assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

16 293-A:14.04 Revocation of Dissolution.

17 (a) A corporation may revoke its dissolution within 120 days of its effective date.

18 (b) Revocation of dissolution must be authorized in the same manner as the dissolution
19 was authorized unless that authorization permitted revocation by action of the board of directors
20 alone, in which event the board of directors may revoke the dissolution without shareholder action.

21 (c) After the revocation of dissolution is authorized, the corporation may revoke the
22 dissolution by delivering to the secretary of state for filing articles of revocation of dissolution,
23 together with a copy of its articles of dissolution, that set forth:

24 (1) the name of the corporation;

25 (2) the effective date of the dissolution that was revoked;

26 (3) the date that the revocation of dissolution was authorized;

27 (4) if the corporation’s board of directors (or incorporators) revoked the dissolution, a
28 statement to that effect;

29 (5) if the corporation’s board of directors revoked a dissolution authorized by the
30 shareholders, a statement that revocation was permitted by action by the board of directors alone
31 pursuant to that authorization; and

32 (6) if shareholder action was required to revoke the dissolution, the information
33 required by RSA 293-A:14.03(a)(3).

34 (d) Revocation of dissolution is effective upon the effective date of the articles of
35 revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

293-A:14.05 Effect of Dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) collecting its assets;
- (2) disposing of its properties that will not be distributed in kind to its shareholders;
- (3) discharging or making provision for discharging its liabilities;
- (4) distributing its remaining property among its shareholders according to their interests; and
- (5) doing every other act necessary to wind up and liquidate its business and affairs.

(b) Prior to making any distributions of its remaining property among its shareholders according to their interests, the corporation shall first obtain a certificate of dissolution from the department of revenue administration in accordance with RSA 77-A:18 and RSA 77-E:12.

(c) Dissolution of a corporation does not:

- (1) transfer title to the corporation's property;
- (2) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) subject its directors or officers to standards of conduct different from those prescribed in RSA 293-A:8.01 through RSA 293-A:8.70;
- (4) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (5) prevent commencement of a proceeding by or against the corporation in its corporate name;
- (6) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) terminate the authority of the registered agent of the corporation.

293-A:14.06 Known Claims Against Dissolved Corporation.

(a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(b) The written notice must:

- (1) describe information that must be included in a claim;
- (2) provide a mailing address where a claim may be sent;
- (3) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

1 (4) state that the claim will be barred if not received by the deadline.

2 (c) A claim against the dissolved corporation is barred:

3 (1) if a claimant who was given written notice under RSA 293-A:14.06(b) does not
4 deliver the claim to the dissolved corporation by the deadline; or

5 (2) if a claimant whose claim was rejected by the dissolved corporation does not
6 commence a proceeding to enforce the claim within 90 days from the effective date of the rejection
7 notice.

8 (d) For purposes of this section, “claim” does not include a contingent liability or a claim
9 based on an event occurring after the effective date of dissolution.

10 293-A:14.07 Other Claims Against Dissolved Corporation.

11 (a) A dissolved corporation may also publish notice of its dissolution and request that
12 persons with claims against the dissolved corporation present them in accordance with the notice.

13 (b) The notice must:

14 (1) be published one time in a newspaper of general circulation in the county where
15 the dissolved corporation’s principal office (or, if none in this state, its registered office) is or was last
16 located;

17 (2) describe the information that must be included in a claim and provide a mailing
18 address where the claim may be sent; and

19 (3) state that a claim against the dissolved corporation will be barred unless a
20 proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

21 (c) If the dissolved corporation publishes a newspaper notice in accordance with RSA
22 293-A:14.07(b), the claim of each of the following claimants is barred unless the claimant commences
23 a proceeding to enforce the claim against the dissolved corporation within 3 years after the
24 publication date of the newspaper notice:

25 (1) a claimant who was not given written notice under RSA 293-A:14.06;

26 (2) a claimant whose claim was timely sent to the dissolved corporation but not acted
27 on;

28 (3) a claimant whose claim is contingent or based on an event occurring after the
29 effective date of dissolution.

30 (d) A claim that is not barred by RSA 293-A:14.06(b) or RSA 293-A:14.07(c) may be
31 enforced:

32 (1) against the dissolved corporation, to the extent of its undistributed assets; or

33 (2) except as provided in RSA 293-A:14.08(d), if the assets have been distributed in
34 liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder’s pro
35 rata share of the claim or the corporate assets distributed to the shareholder in liquidation,
36 whichever is less, but a shareholder’s total liability for all claims under this section may not exceed
37 the total amount of assets distributed to the shareholder.

(a) A dissolved corporation that has published a notice under RSA 293-A:14.07 may file an application with the superior court of the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under RSA 293-A:14.07(c).

(b) Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under RSA 293-A:14.08(a) shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

22 293-A:14.09 Director Duties.

(a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation which has disposed of claims under RSA 293-A:14.06, RSA 293-A:14.07, or RSA 293-A:14.08 shall not be liable for breach of RSA 293-A:14.09(a) with respect to claims against the dissolved corporation that are barred or satisfied under RSA 293-A:14.06, RSA 293-A:14.07, or RSA 293-A:14.08.

30 Part B

31 Administrative Dissolution

32 293-A:14.20 Grounds for Administrative Dissolution.

33 (a) The secretary of state may commence a proceeding under RSA 293-A:14.21 to
34 administratively dissolve a corporation if:

(1) the corporation does not pay any annual fees or penalties imposed by this chapter or other law for 12 months after they are due;

(2) the corporation does not deliver its annual report to the secretary of state for 12 months after it is due;

(3) the corporation is without a registered agent or registered office in this state for 60 days or more;

(4) the corporation does not notify the secretary of state within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

293-A:14.21 Procedure for and Effect of Administrative Dissolution.

(a) If the secretary of state determines that one or more grounds exist under RSA 293-A:14.20 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of such determination under RSA 293-A:5.04.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is perfected under RSA 293-A:5.04, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under RSA 293-A:5.04.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under RSA 293-A:14.05 and notify claimants under RSA 293-A:14.06 and RSA 293-A:14.07.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) The secretary of state shall not permit any other individual, corporation, or other business entity to assume the same name or a similar name, of a corporation administratively dissolved under this section, or any trade name registered by such corporation pursuant to RSA 349, for a period of 120 days following the notice of administrative dissolution without the written consent of such corporation.

293-A:14.22 Reinstatement Following Administrative Dissolution.

(a) A corporation administratively dissolved under RSA 293-A:14.21 may apply to the secretary of state for reinstatement within 3 years after the effective date of dissolution. The application must:

(1) recite the name of the corporation and the effective date of its administrative dissolution;

(2) state that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) state that the corporation's name satisfies the requirements of RSA 293-A:4.01;
and

(4) contain a certificate from the department of revenue administration in accordance with RSA 77-A:18, III, and RSA 77-E:12, III, if such application is received by the secretary of state more than 120 days after the notice of administrative dissolution is mailed.

(b) If the secretary of state determines that the application contains the information required by RSA 293-A:14.22(a) and that the information is correct, that the corporation name is available for registration and that it is accompanied by the fee required by RSA 291-A:1.22(a)(7), the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites such determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under RSA 293-A:5.04. If the application for reinstatement included a change of name of the corporation, such certificate of reinstatement shall set forth the change of name of the corporation, and such certificate shall constitute an amendment to the articles of incorporation.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

293-A:14.22-a Late Reinstatement.

(a) A corporation administratively dissolved under RSA 293-A:14.21 may apply to the secretary of state for late reinstatement if more than 3 years have expired since the effective date of dissolution upon a showing by the corporation's acting or former directors or officers that such late reinstatement will materially benefit one or more of the corporation's legal constituents and will not operate as a fraud upon the public. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name or proposed name satisfies the requirements of RSA 293-A:4.01;

(4) Contain a certificate from the New Hampshire department of revenue administration in accordance with RSA 77-A:18, III, and RSA 77-E:12, III;

(5) Contain a statement asserting that no lawsuits are pending against the corporation;

(6) Contain a statement explaining the reason that reinstatement is being requested;

(7) Include all of the annual report fees, if any, for each year since the date of dissolution; and

SB 205 – AS INTRODUCED
- Page 116 -

1 (8) Contain a statement from the commissioner of the department of employment
2 security showing that to the best of the commissioner's knowledge, as of the date of the statement,
3 such corporation has paid all of its contributions or that it was not liable for any contributions, or
4 that it has made adequate provisions, with such surety as shall be satisfactory to the future payment
5 of any contributions.

6 (b) If the secretary of state determines that the application contains the information
7 required by subsection (a), and that the corporation name is available for registration, and that it is
8 accompanied by the fee required in RSA 293-A:1.22(a)(13), the secretary of state shall schedule a
9 public hearing on the application. The public hearing shall be held before the secretary of state, or
10 designee and the attorney general, or designee. Any interested party shall have the right to testify
11 at a late reinstatement hearing. Late reinstatement hearings shall be conducted twice a year, on
12 April 1 and September 1. If any such date falls upon a Saturday, Sunday, or legal holiday, the
13 hearing shall be held on the first business day after each date. An application for late reinstatement
14 must be received at least one month prior to a hearing date in order to be scheduled for that date.

15 (c) Notice of the late reinstatement hearing shall be published one time in a newspaper
16 of general circulation in the county where the dissolved corporation's principal office, or, if none in
17 this state, its registered office, is or was last located. The notice shall:

18 (1) Clearly state the reason for the hearing.

19 (2) State the date, time, and location of the hearing.

20 (3) Indicate that all interested parties are encouraged to attend or submit written
21 comments within one week of the hearing.

22 (4) Include the mailing address of the secretary of state.

23 (d) If, after the public hearing, the secretary of state, in conjunction with the attorney
24 general, determines that the information submitted in the application for late reinstatement is
25 correct, that the corporation has made the showing required under RSA 293-A:14.22-a(a), and that
26 the corporation should be reinstated, the secretary of state shall cancel the notice of dissolution and
27 prepare a notice of reinstatement that recites the determination and the effective date of
28 reinstatement and mail said notice to the corporation.

29 (e) If the application for reinstatement included a change of name of the corporation, the
30 notice shall set forth the change of name of the corporation and the fee required pursuant to
31 RSA 293-A:1.22(a)(2), and the notice shall constitute an amendment to the articles of incorporation.
32 If the application for reinstatement included a change of the registered agent, the notice shall set
33 forth the name of the new registered agent and the fee required pursuant to RSA 293-A:1.22(b)(5).

34 (f) When the reinstatement is effective, it relates back to and takes effect as of the
35 effective date of the administrative dissolution and the corporation resumes carrying on its business
36 as if the administrative dissolution had never occurred.

1 (g) Except for provisions and requirements set forth in this section, late reinstatement
2 hearings shall be subject to RSA 421-B:26-a.

3 293-A:14.23 Appeal From Denial of Reinstatement.

4 (a) If the secretary of state denies a corporation's application for reinstatement following
5 administrative dissolution, the secretary of state shall serve the corporation under RSA 293-A:5.04
6 with a written notice that explains the reason or reasons for denial.

7 (b) The corporation may appeal the denial of reinstatement to the superior court of the
8 county in which its principal office (or, if none in this state, its registered office) is located within 30
9 days after service of the notice of denial is perfected, as provided in RSA 293-A:5.04. The corporation
10 shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies
11 of the secretary of state's certificate of dissolution, the corporation's application for reinstatement,
12 and the secretary of state's notice of denial.

13 (c) The court may summarily order the secretary of state to reinstate the dissolved
14 corporation or may take other action the court considers appropriate.

15 (d) The court's final decision may be appealed as in other civil proceedings.

16 Part C

17 Judicial Dissolution

18 293-A:14.30 Grounds for Judicial Dissolution.

19 (a) The superior court for the county in which its principal office (or, if none in this state,
20 its registered office) is located may dissolve a corporation:

21 (1) in a proceeding by the attorney general if it is established that:

22 (i) the corporation obtained its articles of incorporation through fraud; or

23 (ii) the corporation has continued to exceed or abuse the authority conferred
24 upon it by law;

25 (2) in a proceeding by a shareholder if it is established that:

26 (i) the directors are deadlocked in the management of the corporate affairs, the
27 shareholders are unable to break the deadlock, and irreparable injury to the corporation is
28 threatened or being suffered, or the business and affairs of the corporation can no longer be
29 conducted to the advantage of the shareholders generally, because of the deadlock;

30 (ii) the directors or those in control of the corporation have acted, are acting, or
31 will act in a manner that is illegal or fraudulent;

32 (iii) the shareholders are deadlocked in voting power and have failed, for a period
33 that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose
34 terms have expired;

35 (iv) the corporate assets are being misapplied or wasted; or

36 (v) an agreement under the provisions of RSA 293-A:7.32(a)(7) binding on all of
37 the shareholders so provides.

1 (3) in a proceeding by a creditor if it is established that:

2 (i) the creditor's claim has been reduced to judgment, the execution on the
3 judgment returned unsatisfied, and the corporation is insolvent; or

4 (ii) the corporation has admitted in writing that the creditor's claim is due and
5 owing and the corporation is insolvent; or

6 (4) in a proceeding by the corporation to have its voluntary dissolution continued
7 under court supervision.

8 (5) in a proceeding by a shareholder if the corporation has abandoned its business
9 and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

10 (b) RSA 293-A:14.30(a)(2) shall not apply in the case of a corporation that, on the date of
11 the filing of the proceeding, has shares which are:

12 (1) listed on the New York Stock Exchange, the American Stock Exchange, or on any
13 exchange owned or operated by the NASDAQ Stock Market LLC, or listed or quoted on a system
14 owned or operated by the National Association of Securities Dealers, Inc.; or

15 (2) not so listed or quoted, but are held by at least 300 shareholders and the shares
16 outstanding have a market value of at least \$20 million (exclusive of the value of such shares held by
17 the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more
18 than 10 percent of such shares).

19 (c) In this section, "beneficial shareholder" has the meaning specified in RSA 293-
20 A:13.01(2).

21 293-A:14.31 Procedure for Judicial Dissolution.

22 (a) Venue for a proceeding by the attorney general to dissolve a corporation lies in
23 Merrimack county. Venue for a proceeding brought by any other party named in RSA 293-A:14.30(a)
24 lies in the county where a corporation's principal office (or, if none in this state, its registered office)
25 is or was last located.

26 (b) It is not necessary to make shareholders parties to a proceeding to dissolve a
27 corporation unless relief is sought against them individually.

28 (c) A court in a proceeding brought to dissolve a corporation may issue injunctions,
29 appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other
30 action required to preserve the corporate assets wherever located, and carry on the business of the
31 corporation until a full hearing can be held.

32 (d) Within 10 days of the commencement of a proceeding to dissolve a corporation under
33 RSA 293-A:14.30(a)(2), the corporation must send to all shareholders, other than the petitioner, a
34 notice stating that the shareholders are entitled to avoid the dissolution of the corporation by
35 electing to purchase the petitioner's shares under RSA 293-A:14.34 and accompanied by a copy of
36 RSA 293-A:14.34.

37 293-A:14.32 Receivership or Custodianship.

1 (a) Unless an election to purchase has been filed under RSA 293-A:14.34, a court in a
2 judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up
3 and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The
4 court shall hold a hearing, after notifying all parties to the proceeding and any interested persons
5 designated by the court, before appointing a receiver or custodian. The court appointing a receiver or
6 custodian has jurisdiction over the corporation and all of its property wherever located.

7 (b) The court may appoint an individual or a domestic or foreign corporation (authorized
8 to transact business in this state) as a receiver or custodian. The court may require the receiver or
9 custodian to post bond, with or without sureties, in an amount the court directs.

10 (c) The court shall describe the powers and duties of the receiver or custodian in its
11 appointing order, which may be amended from time to time. Among other powers:

12 (1) the receiver (i) may dispose of all or any part of the assets of the corporation
13 wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend
14 in his or her own name as receiver of the corporation in all courts of this state;

15 (2) the custodian may exercise all of the powers of the corporation, through or in
16 place of its board of directors, to the extent necessary to manage the affairs of the corporation in the
17 best interests of its shareholders and creditors.

18 (d) The court during a receivership may redesignate the receiver a custodian, and during
19 a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the
20 corporation, its shareholders, and creditors.

21 (e) The court from time to time during the receivership or custodianship may order
22 compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of
23 the corporation or proceeds from the sale of the assets.

24 293-A:14.33 Decree of Dissolution.

25 (a) If after a hearing the court determines that one or more grounds for judicial
26 dissolution described in RSA 293-A:14.30 exist, it may enter a decree dissolving the corporation and
27 specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy
28 of the decree to the secretary of state, who shall file it and at the same time shall mail notice of such
29 decree to the department of revenue administration.

30 (b) After entering the decree of dissolution, the court shall direct the winding up and
31 liquidation of the corporation's business and affairs in accordance with RSA 293-A:14.05 and the
32 notification of claimants in accordance with RSA 293-A:14.06 and RSA 293-A:14.07.

33 293-A:14.34 Election to Purchase in Lieu of Dissolution.

34 (a) In a proceeding under RSA 293-A:14.30(a)(2) to dissolve a corporation, the
35 corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares
36 owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this
37 section shall be irrevocable unless the court determines that it is equitable to set aside or modify the
38 election.

1 (b) An election to purchase pursuant to this section may be filed with the court at any
2 time within 90 days after the filing of the petition under RSA 293-A:14.30(a)(2) or at such later time
3 as the court in its discretion may allow. If the election to purchase is filed by one or more
4 shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders,
5 other than the petitioner. The notice must state the name and number of shares owned by the
6 petitioner and the name and number of shares owned by each electing shareholder and must advise
7 the recipients of their right to join in the election to purchase shares in accordance with this section.
8 Shareholders who wish to participate must file notice of their intention to join in the purchase no
9 later than 30 days after the effective date of the notice to them. All shareholders who have filed an
10 election or notice of their intention to participate in the election to purchase thereby become parties
11 to the proceeding and shall participate in the purchase in proportion to their ownership of shares as
12 of the date the first election was filed, unless they otherwise agree or the court otherwise directs.
13 After an election has been filed by the corporation or one or more shareholders, the proceeding under
14 RSA 293-A:14.30(a)(2) may not be discontinued or settled, nor may the petitioning shareholder sell
15 or otherwise dispose of his or her shares, unless the court determines that it would be equitable to
16 the corporation and the shareholders, other than the petitioner, to permit such discontinuance,
17 settlement, sale, or other disposition.

18 (c) If, within 60 days of the filing of the first election, the parties reach agreement as to
19 the fair value and terms of purchase of the petitioner's shares, the court shall enter an order
20 directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

21 (d) If the parties are unable to reach an agreement as provided for in RSA 293-
22 A:14.34(c), the court, upon application of any party, shall stay the RSA 293-A:14.30(a)(2) proceedings
23 and determine the fair value of the petitioner's shares as of the day before the date on which the
24 petition under RSA 293-A:14.30(a)(2) was filed or as of such other date as the court deems
25 appropriate under the circumstances.

26 (e) Upon determining the fair value of the shares, the court shall enter an order
27 directing the purchase upon such terms and conditions as the court deems appropriate, which may
28 include payment of the purchase price in installments, where necessary in the interests of equity,
29 provision for security to assure payment of the purchase price and any additional costs, fees and
30 expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the
31 allocation of shares among them. In allocating petitioner's shares among holders of different classes
32 of shares, the court should attempt to preserve the existing distribution of voting rights among
33 holders of different classes insofar as practicable and may direct that holders of a specific class or
34 classes shall not participate in the purchase. Interest may be allowed at the rate and from the date
35 determined by the court to be equitable, but if the court finds that the refusal of the petitioning
36 shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest
37 shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief

1 under subparagraphs (ii) or (iv) of RSA 293-A:14.30(a)(2), it may award costs, fees and expenses to
2 the petitioning shareholder.

3 (f) Upon entry of an order under RSA 293-A:14.34(c) or (e), the court shall dismiss the
4 petition to dissolve the corporation under RSA 293-A:14.30(a)(2), and the petitioning shareholder
5 shall no longer have any rights or status as a shareholder of the corporation, except the right to
6 receive the amounts awarded by the order of the court which shall be enforceable in the same
7 manner as any other judgment.

8 (g) The purchase ordered pursuant to RSA 293-A:14.34(e) shall be made within 10 days
9 after the date the order becomes final unless before that time the corporation files with the court a
10 notice of its intention to adopt articles of dissolution pursuant to RSA 293-A:14.02 and RSA 293-
11 A:14.03, which articles must then be adopted and filed within 50 days thereafter. Upon filing of such
12 articles of dissolution, the corporation shall be dissolved in accordance with the provisions of
13 RSA 293-A:14.05 through RSA 293-A:14.07, and the order entered pursuant to RSA 293-A:14.34(e)
14 shall no longer be of any force or effect, except that the court may award the petitioning shareholder
15 costs, fees and expenses in accordance with the provisions of the last sentence of RSA 293-A:14.34(e)
16 and the petitioner may continue to pursue any claims previously asserted on behalf of the
17 corporation.

18 (h) Any payment by the corporation pursuant to an order under RSA 293-A:14.34(c) or
19 (e), other than an award of costs, fees and expenses pursuant to RSA 293-A:14.34(e), is subject to the
20 provisions of RSA 293-A:6.40.

21 Foreign Corporations

22 Part A

23 Certificate of Authority

24 293-A:15.01 Authority to Transact Business Required.

25 (a) A foreign corporation may not transact business in this state until it obtains a
26 certificate of authority from the secretary of state.

27 (b) The following activities, among others, do not constitute transacting business within
28 the meaning of RSA 293-A:15.01(a):

29 (1) maintaining, defending, or settling any proceeding;

30 (2) holding meetings of the board of directors or shareholders or carrying on other
31 activities concerning internal corporate affairs;

32 (3) maintaining bank accounts;

33 (4) maintaining offices or agencies for the transfer, exchange, and registration of the
34 corporation's own securities or maintaining trustees or depositaries with respect to those securities;

35 (5) selling through independent contractors;

36 (6) soliciting or obtaining orders, whether by mail or through employees or agents or
37 otherwise, if the orders require acceptance outside this state before they become contracts;

1 (7) creating or acquiring indebtedness, mortgages, and security interests in real or
2 personal property;

3 (8) securing or collecting debts or enforcing mortgages and security interests in
4 property securing the debts;

5 (9) owning, without more, real or personal property;

6 (10) conducting an isolated transaction that is completed within 30 days and that is
7 not one in the course of repeated transactions of a like nature; or

8 (11) transacting business in interstate commerce.

9 (c) The list of activities in RSA 293-A:15.01(b) is not exhaustive.

10 (d) Nothing in this section shall be construed so as to preclude a determination that a
11 foreign corporation is carrying on business activity within this state within the meaning of RSA 77-
12 A:1, XII.

13 (e) Any so-called Massachusetts trust or business trust established by law of any other
14 state, desiring to do business in this state, shall be deemed to be a foreign corporation and shall be
15 required to register under and comply with the provisions of this subdivision.

16 293-A:15.02 Consequences of Transacting Business Without Authority.

17 (a) A foreign corporation transacting business in this state without a certificate of
18 authority may not maintain a proceeding in any court in this state until it obtains a certificate of
19 authority.

20 (b) The successor to a foreign corporation that transacted business in this state without
21 a certificate of authority and the assignee of a cause of action arising out of that business may not
22 maintain a proceeding based on that cause of action in any court in this state until the foreign
23 corporation or its successor obtains a certificate of authority.

24 (c) A court may stay a proceeding commenced by a foreign corporation, its successor, or
25 assignee until it determines whether the foreign corporation or its successor requires a certificate of
26 authority. If it so determines, the court may further stay the proceeding until the foreign
27 corporation or its successor obtains the certificate.

28 (d) A foreign corporation which transacts business in this state without a certificate of
29 authority shall be liable to this state, for the years or parts of any years during which it transacted
30 business in this state without a certificate of authority, in an amount equal to all fees which would
31 have been imposed by this subdivision upon the corporation had it duly applied for and received a
32 certificate of authority to transact business in this state as required by this subdivision and
33 thereafter filed all required reports. The corporation shall also be liable for any penalties imposed by
34 this subdivision for failure to pay such fees. The attorney general shall bring proceedings to recover
35 all amounts due under the provisions of this section.

SB 205 – AS INTRODUCED
- Page 123 -

1 (e) Notwithstanding RSA 293-A:15.02(a) and (b), the failure of a foreign corporation to
2 obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from
3 defending any proceeding in this state.

4 293-A:15.03 Application for Certificate of Authority.

5 (a) A foreign corporation may apply for a certificate of authority to transact business in
6 this state by delivering an application to the secretary of state for filing. The application must set
7 forth:

8 (1) the name of the foreign corporation or, if its name is unavailable for use in this
9 state, a corporate name that satisfies the requirements of RSA 293-A:15.06;

10 (2) the name of the state or country under whose law it is incorporated;

11 (3) its date of incorporation and period of duration;

12 (4) the street address of its principal office;

13 (5) the address of its registered office in this state and the name of its registered
14 agent at that office; and

15 (6) the names and usual business addresses of its current directors and officers.

16 (b) The foreign corporation shall deliver with the completed application a certificate of
17 existence (or a document of similar import) duly authenticated by the secretary of state or other
18 official having custody of corporate records in the state or country under whose law it is
19 incorporated, issued not more than 60 days before the application is received by the secretary of
20 state.

21 293-A:15.04 Amended Certificate of Authority.

22 (a) A foreign corporation authorized to transact business in this state must obtain an
23 amended certificate of authority from the secretary of state if it changes:

24 (1) its corporate name;

25 (2) the period of its duration; or

26 (3) the state or country of its incorporation.

27 (b) The requirements of RSA 293-A:15.03 for obtaining an original certificate of
28 authority apply to obtaining an amended certificate under this section.

29 293-A:15.05 Effect of Certificate of Authority.

30 (a) A certificate of authority authorizes the foreign corporation to which it is issued to
31 transact business in this state subject, however, to the right of the state to revoke the certificate as
32 provided in this chapter.

33 (b) A foreign corporation with a valid certificate of authority has the same but no greater
34 rights and has the same but no greater privileges as, and except as otherwise provided by this
35 chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on,
36 a domestic corporation of like character.

(c) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

293-A:15.06 Corporate Name of Foreign Corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of RSA 293-A:4.01, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) may add to its corporate name for use in this state the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.”; or

(2) may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by RSA 293-A:15.06(c) and (d), the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the secretary of state from:

(1) the corporate name of a corporation incorporated or authorized to transact business in this state;

(2) a corporate name reserved or registered under RSA 293-A:4.02 or RSA 293-A:4.03;

(3) the fictitious name of another foreign corporation authorized to transact business in this state; and

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(c) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon the secretary of state’s records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and delivers an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(2) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

1 (3) has acquired all or substantially all of the assets, including the corporate name,
2 of the other corporation.

3 (e) If a foreign corporation authorized to transact business in this state changes its
4 corporate name to one that does not satisfy the requirements of RSA 293-A:4.01, it may not transact
5 business in this state under the changed name until it adopts a name satisfying the requirements of
6 RSA 293-A:4.01 and obtains an amended certificate of authority under RSA 293-A:15.04.

7 293-A:15.07 Registered Office and Registered Agent of Foreign Corporation.

8 (a) Each foreign corporation authorized to transact business in this state must
9 continuously maintain in this state:

10 (1) a registered office that may be the same as any of its places of business; and

11 (2) a registered agent, who may be:

12 (i) an individual who resides in this state and whose business office is identical
13 with the registered office;

14 (ii) a domestic corporation, not-for-profit corporation, limited liability company,
15 or limited liability partnership, whose business office is identical with its registered office; or

16 (iii) a foreign corporation, not-for-profit corporation, limited liability company, or
17 limited liability partnership, authorized to transact business in this state, whose business office is
18 identical with its registered office.

19 293-A:15.08 Change of Registered Office or Registered Agent of Foreign Corporation.

20 (a) A foreign corporation authorized to transact business in this state may change its
21 registered office or registered agent by delivering to the secretary of state for filing a statement of
22 change that sets forth:

23 (1) its name;

24 (2) the street address of its current registered office;

25 (3) if the current registered office is to be changed, the street address of its new
26 registered office;

27 (4) the name of its current registered agent;

28 (5) if the current registered agent is to be changed, the name of its new registered
29 agent and the new agent's written consent (either on the statement or attached to it) to the
30 appointment; and

31 (6) that after the change or changes are made, the street addresses of its registered
32 office and the business office of its registered agent will be identical.

33 (b) If the street address of a registered agent's business office changes, the agent may
34 change the street address of the registered office of any foreign corporation for which the person is
35 the registered agent by notifying the corporation in writing of the change, and signing and delivering
36 to the secretary of state for filing a statement of change that complies with the requirements of
37 RSA 293-A:15.08(a) and recites that the corporation has been notified of the change.

293-A:15.09 Resignation of Registered Agent of Foreign Corporation.

(a) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing the signed original and 2 exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The secretary of state shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

293-A:15.10 Service on Foreign Corporation.

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:

(1) has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) has withdrawn from transacting business in this state under RSA 293-A:15.20; or

(3) has had its certificate of authority revoked under RSA 293-A:15.31.

(c) Service is perfected under RSA 293-A:15.10(b) at the earliest of:

(1) the date the foreign corporation receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Part B

Withdrawal or Transfer of Authority

293-A:15.20 Withdrawal of Foreign Corporation.

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

1 (1) the name of the foreign corporation and the name of the state or country under
2 whose law it is incorporated;

3 (2) that it is not transacting business in this state and that it surrenders its
4 authority to transact business in this state;

5 (3) that it revokes the authority of its registered agent to accept service on its behalf
6 and appoints the secretary of state as its agent for service of process in any proceeding based on a
7 cause of action arising during the time it was authorized to transact business in this state;

8 (4) a mailing address to which the secretary of state may mail a copy of any process
9 served on the secretary of state under subparagraph (3);

10 (5) a commitment to notify the secretary of state in the future of any change in its
11 mailing address; and

12 (6) a statement of withdrawal from the New Hampshire department of revenue
13 administration in accordance with RSA 77-A:18, II and RSA 77-E:12, II.

14 (c) After the withdrawal of the corporation is effective, service of process on the secretary
15 of state under this section is service on the foreign corporation. Upon receipt of process, the
16 secretary of state shall mail a copy of the process to the foreign corporation at the mailing address
17 set forth under RSA 293-A:15.20(b).

18 293-A:15.21 Automatic Withdrawal Upon Certain Conversions. A foreign corporation
19 authorized to transact business in this state that converts to a domestic nonprofit corporation or any
20 form of domestic filing entity shall be deemed to have withdrawn on the effective date of the
21 conversion.

22 293-A:15.22 Withdrawal Upon Conversion to a Nonfiling Entity.

23 (a) A foreign corporation authorized to transact business in this state that converts to a
24 domestic or foreign nonfiling entity shall apply for a certificate of withdrawal by delivering an
25 application to the secretary of state for filing. The application must set forth:

26 (1) the name of the foreign corporation and the name of the state or country under
27 whose law it was incorporated before the conversion;

28 (2) that it surrenders its authority to transact business in this state as a foreign
29 corporation;

30 (3) the type of unincorporated entity to which it has been converted and the
31 jurisdiction whose laws govern its internal affairs;

32 (4) if it has been converted to a foreign unincorporated entity:

33 (i) that it revokes the authority of its registered agent to accept service on its
34 behalf and appoints the secretary of state as its agent for service of process in any proceeding based
35 on a cause of action arising during the time it was authorized to transact business in this state;

36 (ii) a mailing address to which the secretary of state may mail a copy of any
37 process served on the secretary of state under paragraph (i); and

(iii) a commitment to notify the secretary of state in the future of any change in its mailing address.

(b) After the withdrawal under this section of a corporation that has converted to a foreign unincorporated entity is effective, service of process on the secretary of state is service on the foreign unincorporated entity. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign unincorporated entity at the mailing address set forth under RSA 293-A:15.22(a)(4).

(c) After the withdrawal under this section of a corporation that has converted to a domestic unincorporated entity is effective, service of process shall be made on the unincorporated entity in accordance with the regular procedures for service of process on the form of unincorporated entity to which the corporation was converted.

293-A:15.23 Transfer of Authority.

(a) A foreign business corporation authorized to transact business in this state that converts to a foreign nonprofit corporation or to any form of foreign unincorporated entity that is required to obtain a certificate of authority or make a similar type of filing with the secretary of state if it transacts business in this state shall file with the secretary of state an application for transfer of authority signed by any officer or other duly authorized representative. The application shall set forth:

(1) the name of the corporation;

(2) the type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs; and

(3) any other information that would be required in a filing under the laws of this state by an unincorporated entity of the type the corporation has become seeking authority to transact business in this state.

(b) The application for transfer of authority shall be delivered to the secretary of state for filing and shall take effect at the effective time provided in RSA 293-A:1.23.

(c) Upon the effectiveness of the application for transfer of authority, the authority of the corporation under this subdivision to transact business in this state shall be transferred without interruption to the converted entity which shall thereafter hold such authority subject to the provisions of the laws of this state applicable to that type of unincorporated entity.

Part C

Revocation of Certificate of Authority

293-A:15.30 Grounds for Revocation.

(a) The secretary of state may commence a proceeding under RSA 293-A:15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 60 days after it is due;

1 (2) the foreign corporation does not pay within 60 days after they are due any fees or
2 penalties imposed by this chapter or other law;

3 (3) the foreign corporation is without a registered agent or registered office in this
4 state for 60 days or more;

5 (4) the foreign corporation does not inform the secretary of state under RSA 293-
6 A:15.08 or RSA 293-A:15.09 that its registered agent or registered office has changed, that its
7 registered agent has resigned, or that its registered office has been discontinued within 60 days of
8 the change, resignation, or discontinuance;

9 (5) a misrepresentation has been made of any material matter in any application,
10 report, affidavit or other document submitted by the corporation or on its behalf, pursuant to this
11 subdivision ; or

12 (6) the secretary of state receives a duly authenticated certificate from the secretary
13 of state or other official having custody of corporate records in the state or country under whose law
14 the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result
15 of a merger.

16 293-A:15.31 Procedure for and Effect of Revocation.

17 (a) If the secretary of state determines that one or more grounds exist under RSA 293-
18 A:15.30 for revocation of a certificate of authority, the secretary of state shall serve the foreign
19 corporation with written notice of such determination under RSA 293-A:15.10.

20 (b) If the foreign corporation does not correct each ground for revocation or demonstrate
21 to the reasonable satisfaction of the secretary of state that each ground determined by the secretary
22 of state does not exist within 60 days after service of the notice is perfected under RSA 293-A:15.10,
23 the secretary of state may revoke the foreign corporation's certificate of authority by signing a
24 certificate of revocation that recites the ground or grounds for revocation and its effective date. The
25 secretary of state shall file the original of the certificate and serve a copy on the foreign corporation
26 under RSA 293-A:15.10.

27 (c) The authority of a foreign corporation to transact business in this state ceases on the
28 date shown on the certificate revoking its certificate of authority.

29 (d) The secretary of state's revocation of a foreign corporation's certificate of authority
30 appoints the secretary of state the foreign corporation's agent for service of process in any proceeding
31 based on a cause of action which arose during the time the foreign corporation was authorized to
32 transact business in this state. Service of process on the secretary of state under this subsection is
33 service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of
34 the process to the secretary of the foreign corporation at its principal office shown in its most recent
35 annual report or in any subsequent communication received from the corporation stating the current
36 mailing address of its principal office, or, if none are on file, in its application for a certificate of
37 authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

293-A:15.32 Appeal From Revocation.

(a) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the superior court for Merrimack county within 30 days after service of the certificate of revocation is perfected under RSA 293-A:15.10. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(b) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

Records and Reports

Part A

Records

293-A:16.01 Corporate Records.

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in the form of a document, including an electronic record, or in another form capable of conversion into paper form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in RSA 293-A:1.20(k)(5) regarding facts on which a filed document is dependent;

(2) its bylaws or restated bylaws and all amendments to them currently in effect;

(3) resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

(4) the minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past 3 years;

(5) all written communications to shareholders generally within the past 3 years, including the financial statements furnished for the past 3 years under RSA 293-A:16.20;

(6) a list of the names and business addresses of its current directors and officers;
and

(7) its most recent annual report delivered to the secretary of state under RSA 293-A:16.21.

293-A:16.02 Inspection of Records by Shareholders.

(a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in RSA 293-A:16.01(e) if the shareholder gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(b) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its website or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

(c) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of RSA 293-A:16.02(c) and gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(1) excerpts from minutes of any meeting of the board of directors or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders, board of directors, or a committee of the board without a meeting, to the extent not subject to inspection under RSA 293-A:16.02(a);

(2) accounting records of the corporation; and

(3) the record of shareholders.

(d) A shareholder may inspect and copy the records described in RSA 293-A:16.02(b) only if:

(1) the shareholder's demand is made in good faith and for a proper purpose;

(2) the shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(3) the records are directly connected with the shareholder's purpose.

(e) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

1 (f) This section does not affect:

2 (1) the right of a shareholder to inspect records under RSA 293-A:7.20 or, if the
3 shareholder is in litigation with the corporation, to the same extent as any other litigant; or

4 (2) the power of a court, independently of this chapter, to compel the production of
5 corporate records for examination.

6 (g) For purposes of this section, “shareholder” includes a beneficial owner whose shares
7 are held in a voting trust or by a nominee on the shareholder’s behalf.

8 293-A:16.03 Scope of Inspection Right.

9 (a) A shareholder’s agent or attorney has the same inspection and copying rights as the
10 shareholder represented.

11 (b) The right to copy records under RSA 293-A:16.02 includes, if reasonable, the right to
12 receive copies by xerographic or other means, including copies through an electronic transmission if
13 available and so requested by the shareholder.

14 (c) The corporation may comply at its expense with a shareholder’s demand to inspect
15 the record of shareholders under RSA 293-A:16.02(c)(3) by providing the shareholder with a list of
16 shareholders that was compiled no earlier than the date of the shareholder’s demand.

17 (d) The corporation may impose a reasonable charge, covering the costs of labor and
18 material, for copies of any documents provided to the shareholder. The charge may not exceed the
19 estimated cost of production, reproduction or transmission of the records.

20 293-A:16.04 Court-Ordered Inspection.

21 (a) If a corporation does not allow a shareholder who complies with RSA 293-A:16.02(a)
22 to inspect and copy any records required by that subsection to be available for inspection, the
23 superior court of the county where the corporation’s principal office (or, if none in this state, its
24 registered office) is located may summarily order inspection and copying of the records demanded at
25 the corporation’s expense upon application of the shareholder.

26 (b) If a corporation does not within a reasonable time allow a shareholder to inspect and
27 copy any other record, the shareholder who complies with RSA 293-A:16.02(b) and (c) may apply to
28 the superior court in the county where the corporation’s principal office (or, if none in this state, its
29 registered office) is located for an order to permit inspection and copying of the records demanded.
30 The court shall dispose of an application under this subsection on an expedited basis.

31 (c) If the court orders inspection and copying of the records demanded, it shall also order
32 the corporation to pay the shareholder’s expenses incurred to obtain the order unless the corporation
33 proves that it refused inspection in good faith because it had a reasonable basis for doubt about the
34 right of the shareholder to inspect the records demanded.

35 (d) If the court orders inspection and copying of the records demanded, it may impose
36 reasonable restrictions on the use or distribution of the records by the demanding shareholder.

37 293-A:16.05 Inspection of Records by Directors.

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The superior court of the county where the corporation's principal office (or if none in this state, its registered office) is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

293-A:16.06 Exception to Notice Requirement.

(a) Whenever notice would otherwise be required to be given under any provision of this chapter to a shareholder, such notice need not be given if:

(1) Notices to the shareholders of 2 consecutive annual meetings, and all notices of meetings during the period between such 2 consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered; or

(2) All, but not less than 2, payments of dividends on securities during a 12-month period, or 2 consecutive payments of dividends on securities during a period of more than 12 months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

(b) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then-current address, the requirement that notice be given to such shareholder shall be reinstated.

Part B

Reports

293-A:16.20 Financial Statements for Shareholders.

(a) A corporation shall deliver to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, the report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) stating such person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) Within 120 days after the close of each fiscal year, the corporation shall send the annual financial statements to each shareholder. Thereafter, on written request from a shareholder to whom the statements were not sent, the corporation shall send the shareholder the latest financial statements. A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the United States Securities Exchange Commission.

293-A:16.21 Annual Report for Secretary of State.

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

(1) the name of the corporation and the state or country under whose law it is incorporated;

(2) the address of its registered office and the name of its registered agent at that office in this state;

(3) the address of its principal office;

(4) names and business addresses of its directors and principal officers;

(5) a brief description of the nature of its business;

(6) the total number of authorized shares, itemized by class and series, if any, within each class; and

(7) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(b) Information in the annual report must be current as of the date the annual report is signed on behalf of the corporation.

(c) The first annual report must be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 1 of the following calendar years.

(d) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by

1 this section and delivered to the secretary of state within 30 days after the effective date of notice, it
2 is deemed to be timely filed.

3 Transition Provisions

4 293-A:17.01 Application to Existing Domestic Corporations. This chapter applies to all domestic
5 corporations in existence on its effective date that were incorporated under any general statute of
6 this state providing for incorporation of corporations for profit if power to amend or repeal the
7 statute under which the corporation was incorporated was reserved.

8 293-A:17.02 Application to Qualified Foreign Corporations. A foreign corporation authorized to
9 transact business in this state on the effective date of this chapter is subject to this chapter but is not
10 required to obtain a new certificate of authority to transact business under this chapter.

11 293-A:17.03 Saving Provisions.

12 (a) Except as provided in RSA 293-A:17.03(b), the repeal of a statute by this chapter does
13 not affect:

14 (1) the operation of the statute or any action taken under it before its repeal;

15 (2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued,
16 or incurred under the statute before its repeal;

17 (3) any violation of the statute, or any penalty, forfeiture, or punishment incurred
18 because of the violation, before its repeal;

19 (4) any proceeding, reorganization, or dissolution commenced under the statute
20 before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance
21 with the statute as if it had not been repealed.

22 (b) If a penalty or punishment imposed for violation of a statute repealed by this chapter
23 is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in
24 accordance with this chapter.

25 (c) In the event that any provisions of this chapter are deemed to modify, limit, or
26 supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et
27 seq., the provisions of this chapter shall control to the maximum extent permitted by Section
28 102(a)(2) of that federal Act.

29 293-A:17.04 Severability. If any provision of this chapter or its application to any person or
30 circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other
31 provisions or applications of the chapter that can be given effect without the invalid provision or
32 application, and to this end the provisions of the chapter are severable.

33 2 Reference Changed. Amend the introductory paragraph of RSA 384:3, II to read as follows:

34 II. Each director or trustee of a state-chartered bank or savings association shall discharge
35 his or her duties under the same standards that exist for a director of a business corporation under
36 RSA 293-A:8.30 and RSA ~~[293-A:8.31]~~ **293-A:8.60 through RSA 293-A:8.63**, except that:

37 3 Effective Date. This act shall take effect January 1, 2013.